

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
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C/O SUSAN BOWYER, DEPUTY DIRECTOR  
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1440 BROADWAY, SUITE 402  
OAKLAND, CA 94612

Date: MAR 19 2015

Office: VERMONT SERVICE CENTER

FILE: A  
EAC

IN RE: PETITIONER: -----

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to  
Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

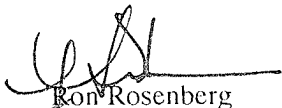
SUSAN BOWYER, DEPUTY DIRECTOR  
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INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner had not established that she was the victim of qualifying criminal activity, and, therefore, was unable to meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner filed a motion to reconsider. The director dismissed the motion, determining that the record showed that the petitioner was a victim of robbery, which is not a qualifying criminal activity and is not substantially similar to the qualifying criminal activity of felonious assault as asserted. The petitioner timely appealed the director's denial of her motion.

#### *Applicable Law*

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification to:

- (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
  - (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
  - (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
  - (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
  - (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States[.]

\* \* \*

Felonious assault is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

- (1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;
- (2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .
- (3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . . ; and
- (4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

*Facts and Procedural History*

The petitioner is a native and citizen of

The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) and an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on . On J , the director issued a Request for Evidence (RFE) for the petitioner to establish: that the criminal activity set forth on the Form I-918 Supplement B is a qualifying criminal activity or substantially similar to one, and that she suffered substantial physical or mental abuse as a result of the criminal activity. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner timely filed a motion to reconsider the denial of the Form I-918 U petition, which the director dismissed. The petitioner subsequently filed the instant appeal. On appeal, the petitioner contends that the offense of robbery in California, of which she was a victim, constitutes felonious assault in California and is, thus, a qualifying criminal activity.

*Claimed Criminal Activity*

In her declaration, the petitioner stated that on , she was robbed and assaulted by a man while she was walking down a street.<sup>1</sup> She stated that he motioned to her to give him her bags and jewelry. He then shook the petitioner before attempting to pull her bag from her. The petitioner pulled the bag back and did not let go, which enraged him and made him pull with more force so that her arm felt as though it would fall off. She stated that she wanted to release the bag because of the pain but it was wrapped around her arm. The perpetrator screamed at her in English, and the petitioner, who did not understand English, started crying and asked him to stop in Spanish. After he got the bag, he pushed the petitioner in the back causing her to fall on the ground on her hands and knees. He then snatched a second bag off her shoulder, causing her to fall on her chest. The petitioner recounted crying hysterically and being in a lot of pain. Eventually, the petitioner was able to get up and had someone call the police.

The Form I-918 Supplement B that the petitioner submitted was signed by Lieutenant Johnny Davis, Youth and Family Services, Oakland Police Department, Oakland, California (certifying official), on .

The certifying official marked the box for felonious assault at Part 3.1 as the criminal activity of which the petitioner was a victim, but he cited to section 211 of the California Penal Code, relating to a robbery offense, as the criminal activity that was investigated or prosecuted in Part 3.3. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he

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<sup>1</sup> The Form I-918 Supplement B and police incident report indicate that the criminal activity occurred on February 8, 2008.

indicated that the perpetrator pulled the purse hanging of the petitioner's shoulder and that both struggled for the bag until the perpetrator pulled the bag off with great force. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that no visible injuries were observed on the petitioner. At Part 4.5, which asks the certifying official to describe the helpfulness of the victim, he stated that the petitioner reported being assaulted and robbed and that she was able to describe the assailant and indicate that she could identify him. The certifying official also stated that the robbery offense under Cal. Penal Code § 211 committed during the incident was the same in all elements as a felonious assault because it was carried out in the commission of a felony, namely robbery.

### *Analysis*

We conduct appellate review on a *de novo* basis. Upon review, we withdraw the director's decision to deny the petition on the stated grounds.

The petitioner has demonstrated that she is a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, namely, felonious assault. The record establishes that the offense of felonious assault against the petitioner was detected and investigated by the certifying agency. Although the certifying official cited the statute for robbery, Cal. Penal Code § 211, in Part 3.3 of the Form I-918 Supplement B, he specified in Part 3.1 that the petitioner was a victim of felonious assault. The certifying official further indicated in Part 4.5 that the petitioner reported being assaulted and robbed during the incident and provided the statute for assault. Additionally, the certifying official noted that the assault committed was a felonious assault because it was carried out during the commission of a felony robbery offense. Nothing in the record contradicts the certifying official's certification of the offense detected and investigated as felonious assault. To the contrary, the record contains the police incident report, which indicates that the investigated crime was felony robbery because the petitioner was the victim of a strong arm robbery where the use of hands, fists, or feet were used to commit the offense and that there was a struggle between the petitioner and the assailant during the robbery. On appeal, the petitioner also submitted a copy of a letter from the District Attorney in San Francisco, California, noting that robbery is not classified as a felony unless there has been a determination by police officers that the offense involved an immediate threat of injury. Consequently, the record as a whole sufficiently demonstrates that the petitioner was a victim of the qualifying criminal activity of felonious assault, and we withdraw the director's determination on this issue.

As noted, the director also determined that the petitioner was unable to meet any of the eligibility criteria at section 101(a)(15)(U)(i) of the Act. However, as that determination was based solely on the director's finding that the petitioner had not established that she was the victim of qualifying criminal activity, which we have now withdrawn, we will return the matter to the director to reconsider the petitioner's eligibility under section 101(a)(15)(U)(i) of the Act.<sup>2</sup>

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<sup>2</sup> In denying the motion to reconsider the instant Form I-918 U petition, the director noted discrepancies in the petitioner's written statement and the police incident report regarding the harm she suffered, but did not address in any probative detail whether the petitioner demonstrated substantial physical or mental abuse as required under section 101(a)(15)(U)(i)(I) of the Act. The motion was ultimately denied on the basis that the petitioner had not demonstrated that she was a victim of qualifying criminal activity.

*Admissibility*

Additionally, section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the director denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. The director indicated that the petitioner was inadmissible under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) (present in the United States without admission or parole).<sup>3</sup> However, the director did not determine whether USCIS would have favorably exercised its discretion and approved the waiver, but rather, denied her waiver request based solely on the denial of her Form I-918 U petition. As the grounds for denial of the petitioner's Form I-918 U petition have been overcome, we will return the matter to the director for reconsideration of the Form I-192 as well.

*Conclusion*

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has been met as to the petitioner's demonstration that she was the victim of a qualifying crime. The petition is not approvable, however, because the petitioner must show she has met the remaining eligibility criteria, she remains inadmissible to the United States and her waiver application was denied. As such, the matter will be remanded to the director for further action and issuance of a new decision.

**ORDER:** The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner shall be certified to the AAO for review.

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<sup>3</sup> The petitioner, who previously attempted to enter the United States using fraudulent documents and had been subsequently removed pursuant to a removal order, is also inadmissible pursuant to sections 212(a)(6)(C)(i) (fraud or willful misrepresentation); 212(a)(9)(A)(ii) (seeking admission within 10 years of departure or removal from United States while a removal order was outstanding); and 212(a)(9)(C)(i)(II) (entering United States without having been admitted after having been previously ordered removed) of the Act. The record also contains a copy of the petitioner's expired passport, so she may also be ineligible under section 212(a)(7)(A)(i) (not in possession of valid unexpired passport) of the Act.