

LAW OFFICE  
**ANNE KETOVER WATKINS, P.A.**

P.O. Box 8184  
PORT ST. LUCIE, FL 34985-8184  
October 31, 2019

TELEPHONE (772) 344-9945  
FACSIMILE (772) 323-2237

VIA FEDERAL EXPRESS

USCIS Nebraska Service Center  
850 S Street  
Lincoln, NE 68508-1225

**RE:**

**Response to Request for Evidence, EAC1.**

Dear USCIS Adjudicating Officer:

This is in response to the Request for Evidence dated August 12, 2019.

USCIS states in its Request for Evidence:

*"The crime indicated on your U Nonimmigrant Status Certification (Form I-918, Supplement B) is not among those specifically listed in regulation, nor does the evidence provided with your filing include sufficient information to indicate that the noted criminal activity is similar to those crimes.*

USCIS then requests "additional evidence to demonstrate that the crime listed on your law enforcement certification would be considered a crime related to those listed in regulation."

**Stalking and Felonious Assault, the criminal activity that occurred and that was certified on Form I-918, Supplement B, are qualifying crimes under INA Section 101(a)(15)(iii) and 8 C.F.R. 214.14.**

USCIS must take a broad look at the facts of the criminal activity that give rise to the certification and not simply rely upon the crimes listed on a police report, or those ultimately charged, in reaching a determination of whether the petitioner was a victim of a crime that fits within one of the enumerated categories of crimes under INA Section 101(a)(15)(U)(iii).<sup>1</sup> In the U Visa Interim Rule, USCIS states:

{t}he statutory list of qualifying criminal activity in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), is not a list of specific statutory violations, but instead **a list of general categories of criminal activity**. It is also a **non-exclusive list**. Any **similar** activity to the activities listed may be a qualifying criminal activity.... [Q]ualifying criminal activity may occur during the commission of non-qualifying criminal activity. For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity.<sup>2</sup>

The \_\_\_\_\_ County Sheriff's Office Certifying Official certified that Ms. \_\_\_\_\_ was a victim of "Felonious Assault (Aggravated Stalking and Aggravated Assault)", "Related Crimes

<sup>1</sup> Preamble to *Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007).

<sup>2</sup> *Id.*, emphasis added.

(See Addendum Attached)” and “Other: Stalking; Repeat Violence”. **Exhibit A, attached.** The documents submitted together with the I-918B are as follows (collectively, **Exhibit B, attached**):

1. [redacted] County Sheriff's Office, Case No.
  - a. **Offense Incident Report** dated [redacted]  
[redacted] Officer [redacted] confirms, “[redacted] was advised that a protection order is an option for her...” and “A complaint will be filed with the State Attorney's Office for a warrant for [redacted]”
  - b. **Witness Statement** dated [redacted] with certified English translation.
  - c. **Complaint Affidavit** dated [redacted]
2. [redacted] County Clerk of Court Case No.: [redacted]  
[redacted] filed a petition for an order of protection as advised by investigating officer Deputy Sheriff Officer [redacted]. The petition was filed in accordance with Florida Criminal Statute 784.046 for Repeat Violence.
  - a. **Case Progress Dockets Notes**
  - b. **Temporary Injunction for Protection** dated [redacted]
  - c. **Final Judgment of Injunction for Protection Against Repeat Violence (After Notice)**, dated [redacted]  
The judge found, “...based on the specific facts of this case, that Petitioner is a victim of repeat violence.”

A careful review of the entire record clearly demonstrates the petitioner was a victim of qualifying criminal activity, i.e. Stalking and Felonious Assault. Stalking is a crime that is specifically enumerated in the list of qualifying crimes in the Violence Against Women Reauthorization Act of 2013, Section 801, amending INA Section 101(a)(15)(iii). Felonious Assault is also specifically enumerated in the Act. Upon his review of the facts of the entire underlying criminal record, the designated certifier, attorney [redacted] I, Esq., Legal Affairs Coordinator, concluded that the [redacted] Sheriff's office detected and investigated the crime of Stalking and Felonious Assault, despite the fact that the words “Stalking” and “Felonious Assault” did not appear on the police reports.

**A. The criminal activity investigated by the [redacted] County Sheriff's Office constitutes Stalking under Florida Statute section 784.048, a qualifying crime specifically listed in the U Non-immigrant visa statute.<sup>3</sup>**

Florida Statute section 784.048(2) states,

any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking. **Exhibit C, attached.**

In this matter, the Offense Incident Report, dated [redacted], notes there was a previous case of harassing phone calls from the perpetrator, [redacted] to Victim ([redacted] County Sheriff's case # [redacted] as well as several other prior incidents of violence and repeat violence, as defined in Florida Statute Section 784.046, against [redacted] by [redacted]. The victim called 911 on at least seven occasions to report either verbal or in person threats of violence made by the perpetrator, [redacted] to the victim. These repeated actions by the perpetrator constitute harassment as defined under Florida Statute Section 784.048(2) as the perpetrator engaged in a

<sup>3</sup> Violence Against Women Reauthorization Act of 2013, Sec. 801, amending INA Section 101(a)(15)(U)(iii) to include Stalking.



"course of conduct directed at a specific person that cause[d] substantial emotional distress in such person and serve[d] no legitimate purpose." Due to the repetitive nature, history and severity of violence against the victim, the \_\_\_\_\_ County Sheriff's Office's reporting officer advised the victim on \_\_\_\_\_, of the availability of a protection order. The \_\_\_\_\_ County Sheriff's Office victim Advocate, offered to provide assistance to the victim in this regard on this date. Following the \_\_\_\_\_ incident, Ms. \_\_\_\_\_ obtained a Temporary, then Final Injunction for Protection against Repeated Violence, under Florida Statute section 784.046, against \_\_\_\_\_.

The criminal activity also constitutes Aggravated Stalking under Florida Statute section 784.048(3) because the perpetrator willfully, maliciously, and repeatedly followed, harassed, or cyberstalked (as defined in Florida Statute section 784.048(1)) the victim and made credible threats, as defined in Florida Statute section 784.048(1) (i.e., to not rest until she saw harm come to the victim, to burn the victim's car, place drugs in her home, and to visit her child at the babysitter's home) with the intent to place the victim in reasonable fear of death or bodily injury to herself and her child. Credible threats are defined under Florida Statute section 784.048(1) as a "threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person." Aggravated stalking is a third degree felony.

Ms. \_\_\_\_\_ was diagnosed with Post-Traumatic Stress Disorder as a result of this criminal activity. See letter from therapist, \_\_\_\_\_ and Ms. \_\_\_\_\_'s declaration on file. She suffered substantial emotional trauma as a result of this criminal activity.

**B. \_\_\_\_\_ County Sheriff's Office Certifying Official confirmed that petitioner was a victim of Felonious Assault, specifically, Aggravated Assault. Aggravated Assault is a qualifying crime based on the plain language of the statute and its regulatory definition because it contains the essential elements of and is substantially similar to a Felonious Assault.**

There is no crime in the Florida criminal code entitled "felonious assault." It is therefore necessary to determine if the crime under Florida law constitutes activity that is "similar" to one of the U Nonimmigrant Visa qualifying crimes.

Although the crimes listed in the police reports are "Harassing Phone Calls", and "Threatening Phone Calls", the facts of the criminal activity involved show that Ms. \_\_\_\_\_ was also a victim of Aggravated Assault as defined by Florida law. Aggravated Assault is a felony and a felonious assault, a qualifying crime under the U Nonimmigrant visa statute. As such, she qualifies as a victim of "felonious assault." The fact that the police listed the crimes as "Threatening Phone Calls" and "Harassing Phone calls" is irrelevant to the fact that what actually occurred also meets the definition of an Aggravated Assault under Florida law.

Under Florida law, aggravated assault (a third degree felony) is:

- An assault;
- With a deadly weapon without intent to kill; or
- With intent to commit a felony.

(Fla. Stat. §784.021). **Exhibit D, attached.**

The criminal activity detected and investigated constitutes Aggravated Assault under Florida Statute section 784.021 in that the perpetrator committed an assault against the victim, as defined

in Florida Statute section 784.011, with an intent to commit a felony, (i.e. aggravated stalking). In order to be a victim of "Aggravated Assault," one must logically be the victim of "Assault." Assault is defined as "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with the apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent."

The perpetrator's intentional and unlawful threats to not rest until she saw harm come to the victim, to burn the victim's car, to place drugs in the victim's home, and "to visit" the victim's child were verbal threats to do violence to the victim and her child. The fact that the perpetrator repeatedly threatened the victim's safety in the past, and stated on \_\_\_\_\_ that she had friends to help her, demonstrates her apparent ability to do such violence. This created a well-founded fear in the victim that such violence was imminent. An assault clearly occurred.

The facts show that that the perpetrator assaulted the applicant while "in the course of committing a felony," i.e. Aggravated Stalking. Although the U Nonimmigrant statute does not list Aggravated Assault as a qualifying crime, it lists "felonious assault" which encompasses any crime of assault that is a felony. Therefore, the applicant can be correctly classified as victim of felonious assault.

### Conclusion

An applicant's eligibility for U Nonimmigrant Status does not depend on what crime the perpetrator is ultimately arrested for or charged with; rather the focus is on what criminal activity the applicant has been a *victim* of. In other words, in determining whether the applicant was a victim of a "qualifying" crime (i.e. a crime specifically enumerated in the U Nonimmigrant Visa Statute, or any crime that is "similar" to one of the qualifying crimes), one must look to the underlying facts of the case, the criminal acts that took place, rather than what law enforcement chose to cite in its initial report or utilize in order to arrest the perpetrator.

Although the U Visa statute requires an applicant to be the *victim* of a "qualifying crime" (or any similar activity), the statute **does not** require a perpetrator to be arrested for a qualifying crime. In fact, it is important to note that the U Visa law does not require that the perpetrator ever be arrested whatsoever. This is because the focus of the U Visa statute is on the victim and the *victimization*. The victim must demonstrate, through the facts and/or other evidence, and that he or she was victimized as a result of qualifying criminal activity, or any activity that is "similar" to that listed in the statute. 8 CFR §214.14(a)(14). The extensive record of facts in this case includes numerous reports and investigations into the victim's victimization culminating in the finding of Stalking, Aggravated Assault and Repeated Violence under Florida Criminal Statutes. **Exhibit E**, attached.

The similar activity analysis requires the USCIS adjudicator to assess whether the nature and elements of the offenses are substantially similar to the statutorily enumerated list of categories of crimes. Petitioner has met her burden under a preponderance of the evidence to show she was a victim of qualifying criminal activity. She has provided credible evidence, when considered in aggregate to show she is a victim of qualifying criminal activity.

In this matter, the designated certifier, attorney \_\_\_\_\_ Esq., Legal Affairs Coordinator, confirmed that the petitioner was victim of qualifying criminal activity on the I-918B. The I-918, Supplement B certified by law enforcement in this case lists the qualifying crime as "Stalking," "Stalking: Repeat Violence," "Felonious Assault," and the related crime of "Aggravated Assault." It clearly notes in Part 3(1), Part 3 (3), and Part 3(5) that these crimes were investigated. The record has ample credible evidence to support his certification. USCIS



should give great deference to the I-918, Supplement B certification.<sup>4</sup> For USCIS to supplant law enforcement expertise in the face of clear evidence of qualifying criminal activity, it undermines the purpose of the U nonimmigrant classification and can undermine law enforcement's confidence in the U visa system.

The federal statute governing U Nonimmigrant status takes into account "the wide variety of state criminal statutes in which the terminology used to describe the criminal activity may not be identical to that found on the statutory list, although the nature and elements of both criminal activities are comparable." See 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007). Based on the law and facts of this case, the applicant is the victim of a qualifying crime of "Stalking," "Stalking: Repeat Violence," and "felonious assault" as listed in the U Nonimmigrant Visa statute, and alternatively, is a victim of criminal activity that is "similar to" felonious assault.

Thank you for your consideration.

Sincerely,



Anne Ketover Watkins, Esq.

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<sup>4</sup> See H.R. Conf. Rep. 106-939, at 72; Interim Rule at 53,018 ("The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons.")