

Via Federal Express

*** [DATE] ***

U.S. Citizenship and Immigration Services
Vermont Service Center
VAWA Unit
75 Lower Welden Street
St. Albans, VT 05479

Re: Petition for U Nonimmigrant Status

Applicant: *****

Dear Sir/Madam:

As evidenced by the enclosed G-28, our office represents the above-referenced individual in his petition for U Nonimmigrant Status. Enclosed for filing, please find the following forms and documentation in support of this petition:

1. Form G-28, Notice of Entry of Appearance of Attorney signed by Applicant;
2. Form I-918, signed by Applicant;
3. Form I-918 Supplement B, signed by Karen M. Guidotti, Chief Deputy District Attorney of San Mateo County;
4. Form I-192;
5. Form I-912, fee waiver for Form I-192 and biometrics;
and
6. Exhibit List and Exhibits in Support of U-Visa Application.

Mr. ***'s Eligibility for a U Visa**

Mr. ***** meets the requirements for a U visa set forth in section 101(a)(15)(U) of the Immigration and Nationality Act (“INA” or “Act”) because he is the direct victim of a qualifying crime. As Mr. ***** explains in great detail in his declaration, he was the victim of a felonious assault after refusing to purchase alcohol for the three unidentified minors. See Exhibit (“Exh.”) D-1, Declaration of Mr. *****.

I. Mr. *** Qualifies as a Direct Victim**

Pursuant to 8 C.F.R. § 214.14(a)(14), a direct victim is defined as “an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal

activity.” Mr. **** suffered direct harm as a result of the physical and emotional trauma he suffered when he was assaulted and beaten.

II. Mr. **** Was the Direct Victim of a Qualifying Crime

The list of qualifying crimes in the statute and federal regulations specifically includes felonious assault. INA § 101(a)(15)(U)(iii); 8 C.F.R. § 214.14(a)(9). As reflected in the I-918 Supplement B, U Nonimmigrant Status Certification, Sean Hart, Detective Sergeant for the Redwood City Police Department, certified that Mr. **** was the victim of criminal activity involving felonious assault.

An assault is defined as “the crime or tort of threatening or attempting to inflict immediate offensive physical contact or bodily harm that one has the present ability to inflict and that puts the victim in fear of such harm or contact compare battery.” Findlaw Dictionary, <http://dictionary.findlaw.com/definition/assault.html> (last visited January 24, 2012). Similarly, an aggravated assault is “a criminal assault accompanied by aggravating factors: as... a criminal assault that is committed with an intent to cause or that causes serious bodily injury esp. through the use of a dangerous weapon... a criminal assault accompanied by the intent to commit or the commission of a felony.” *Id.* A felonious assault is “a criminal assault that is classified as a felony and involves the infliction of serious bodily injury by the use of a dangerous weapon.”

Based on the above definitions, the Battery of which Mr. **** suffered meets the definition of both felonious assault, a crime specifically listed in INA § 101(a)(15)(U)(iii). Mr. *** was assaulted by his attacker when the man held a gun to his head, pushed him to the ground and held him there, breaking his prosthetic hand. Similarly, his attacker unlawfully restrained him while he held Mr. *** to the ground with a gun to his head. Moreover, the definition of felony robbery under the California Penal Code necessarily involves a felonious assault. Accordingly, Mr. *** was the victim of a qualifying crime.

Lastly, the qualifying criminal activity took place in San Carlos, California and, therefore, the eligibility requirement that the activity had to have occurred in the United States has been satisfied. 8 C.F.R. § 214.14(b)(4).

III. Mr. *** Possessed Information Concerning the Criminal Activity and Was Helpful in its Investigation and Prosecution.

To qualify for a U visa, the victim must have possessed information concerning the criminal activity and have been helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based. INA § 101(a)(15)(U)(i)(II)-(III); 8 C.F.R. § 214.14(b)(2)-(3). The law enforcement certification (Form I-918, Supplement B), signed by Karen Guidotti, confirms that Mr. *** possessed information

concerning the criminal activity and was helpful in the investigation. See Form I-918, Supplement B; Exh. D-1; see also 8 C.F.R. § 214.14(a)(12).

On October 15, 2010, Mr. *** was taking his nightly walk in his neighborhood when a car with four passengers pulled up next to him. Exh. D-1. Two of the passengers, who were wearing masks, got out of the car. Id. One of them pointed a gun at Mr. *** as he approached him. Id. The man demanded that Mr. *** hand over his personal property and then pushed him to the ground. Id. When Mr. *** was facing the pavement he felt the aggressor “push the barrel of the gun against the back of [his] head.” Id. The man stole Mr. ***’s cell phone and wallets. Before the man left, he ordered Mr. *** to remain down on the ground. Id. Mr. *** eventually heard the car doors close and the car leave, which is when he finally stood up. Id.

Mr. *** asked for help from a driver of an SUV. Id. After Mr. *** briefly explained to the driver of the SUV that he had been robbed at gun point and asked that the driver call 911, the driver drove in the direction of the fleeing men. Id. Mr. *** then ran to his parents’ home to call 911. Id. Shortly thereafter a police officer arrived at Mr. *** parents’ home. Id.

The night of the incident, Mr. *** accompanied the police officer to the location where one of the men was arrested to participate in an “in-field identification.” Id. Mr. *** was able to positively identify the automobile driven by the men. Id. He was unable to identify the man who the police arrested while running from the car because the man who attacked Mr. *** was wearing a mask during the incident. Id.

The man who the police arrested was ***. Exhs. B-4-B-7. After the arrest, Mr. *** complied with multiple subpoenas to appear in court. I-918 Supp. B. Despite his fear, he testified at a preliminary hearing against Mr. ***. Exh. C-6. Mr. *** was eventually convicted of felony robbery under California Penal Code § 212.5(c) and was sentenced to two years in prison. Exh. C-1. Despite his fear of retaliation from Mr. *** himself or other members of his gang, Mr. *** never refused to provide any reasonably requested information or assistance. I-918 Supp. B.

IV. Mr. *** Suffered Physical and Mental Abuse

In order to qualify for a U visa, the victim must also have suffered substantial physical or mental abuse because of the qualifying criminal activity. INA § 101(a)(15)(U)(i)(I); 8 C.F.R. § 214.14(b)(1). “Physical or mental abuse means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). “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.” 8 C.F.R. § 214.14(b)(1).

Mr. *** suffered both physical and mental trauma after he was robbed at gun point. First, Mr. *** suffered physical injury to his hand. Specifically, his prosthetic mechanical hand was broken when he was pushed and held down on the ground. Because his hand is prosthetic, Mr. *** did not realize the magnitude of the injury to his hand until later that evening, after he was unable to close it. Exh. D-1.

As an amputee Mr. *** relies on his prosthetic hand to perform daily living tasks. Id. Because of the extent of the damage to his hand, Mr. *** had to have his prosthetic hand replaced. Id.; Exhs. D-7, D-8. The State of California recognized that the injury was a result of the attack, as the cost of the replacement of Mr. ***’s prosthesis is being covered by the California Victim Compensation Program. Exhs. D-7, D-8.

Second, Mr. *** also suffered from medical complications as a result of the attack. Although Mr. *** previously suffered from anxiety it had been years since the last time he actually suffered an attack. Exhs. D-2, D-4. However, after he was attacked, his blood pressure began to rise. Exh. D-1. Each time he took his blood pressure, it was high, which was concerning to him. Id. He then suffered an anxiety attack. Id. Mr. *** states, “one night while I was alone at home, I suddenly began sweating, then feeling a cold sensation, hyperventilating, and my heart was beating so hard and fast that at first, I believed I was having a heart attack and I was going to die. I then realized I was having an anxiety attack...” Id.

After his anxiety attack and after prompting by family and friends, Mr. *** saw his treating physician. Id. Although Mr. *** already had prescription medication to control anxiety, Dr. Jones advised Mr. *** of new ways to take his medications in order to control his increased level of anxiety. Id. After a week, when Mr. ***’s symptoms had not improved, he returned to Dr. Jones who then diagnosed him with Post Traumatic Stress Disorder (“PTSD”). Exhs. D-1, D-3, D-4. She recommended that he seek counseling, which he did. Exhs. D-1, D-3.

Mr. *** attended regular counseling sessions with ***, a reverend at his parents’ parish for three months. Exhs. D-1, D-5. Although the counseling sessions helped Mr. *** cope with the conflicting emotions he felt after he was robbed, he continues to suffer from severe anxiety. Exhs. D-1, D-2, D-5.

Because Mr. *** had a history of anxiety, the “psychological consequences” of the attack he suffered have been magnified. Exh. D-2. Dr. Jaime Ross explains that, because of his past, “Mr. Gutierrez developed a marked propensity to anxiety that pre-disposed him to be profoundly impacted by the assault he suffered.” Id. Dr. Ross further explains that “[t]he trauma he suffered last year has become the central organizing principle in Mr. *** day-to-day life.” Id. As a result of the attack, Mr. *** has made lifestyle changes because of his ongoing fear and anxiety. Id.; Exh. D-1.

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Applicant: ***

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V. Conclusion

For all the reasons set forth above and based on all the evidence attached hereto, Mr. *** respectfully requests that your office grant his application for a U-visa.

Thank you for your assistance in this matter. If additional information is needed, please do not hesitate to contact me at (650) 391-****.

Sincerely,

Enclosures

cc: Mr. ***