

Via Federal Express

09/28/2012

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. **Fee Waiver**;
3. **Form I-918 Supplement B**, signed by Sgt. Jeff Liu, East Palo Alto Police Department;
4. Copy of East Palo Alto Police Department **Traffic Collision Report** (“**Police Report**”);
5. **Form I-918**, signed by Applicant;
6. Copy of Mr. *****’s passport;
7. Copy of Mr. *****’s Birth Certificate and its certified translation;
8. Mr. *****’s Declaration (“Applicant’s Declaration”);
9. Copy of Stanford Hospital Emergency Medical Records (“Medical Reports”);
10. Copy of Letter from Chris Hogan, Ophthalmic Technician (“Ophthalmic Letter”);
11. **Form I-918 A**, signed by Applicant for *****, Applicant’s Wife;
12. Copy of Marriage Certificate and its certified translation;
13. Copy of Birth Certificate for ***** and its certified translation;
14. **Form I-918 A**, signed by Applicant for *****, Applicant’s child;
15. Copy of Birth Certificate for ***** and its certified translation;
16. **Form I-918 A**, signed by Applicant for *****, Applicant’s child; and
17. Copy of Birth Certificate for ***** and its certified translation.

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

Mr. Andres **** ("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 "Hit and Run with Injury," which is a similar activity to assault with a deadly weapon. See Applicant's Declaration.

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 hit by the vehicle and injured seriously, requiring medical treatment.

On July 23, 2011, Mr. **** was severely injured when a truck driver hit him and knocked him to the ground with the front of the truck when he tried to cross the street at the crosswalk. The driver did not stop her vehicle and fled before she could be identified and apprehended. See Police Report. Mr. **** clearly suffered great bodily injury as a result of being hit by the truck. See Medical Records; see also Applicant's Declaration. He suffered serious permanent injuries to his right leg and arm and his lower back.

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, which is a similar activity to a "Hit and Run with Injury." 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, Jeff Liu, Sergeant for the East Palo Alto Police Department, certified that Mr. **** was the victim of criminal activity involving "Hit and Run with Injury."

The crime of a "Hit and Run with Injury" can be construed as an Assault with a Deadly Weapon Cal. Pen. § 245(a)(1):

"Any person who [1] **commits an assault upon the person of another** [2] **with a deadly weapon** or instrument other than a firearm or by [3] **means of force likely to produce great bodily injury** shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year..."

With respect to element [1], 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). In California, “attempting” does not require a subjective desire to inflict harm. See People v. Wright, Cal. App. 4th at 706. Rather, it is enough that the driver of the vehicle *should have known* that his or her actions were likely to directly result in a battery by driving into a cross walk at the time individuals were crossing. See Id.

According to the court in Wright, the intent of the driver is not necessary to prove an assault occurred:

“The test is objective. The actor ‘need not be subjectively aware of the risk that a battery might occur.’” (Id. at p. 788, 111 Cal.Rptr.2d 114, 29 P.3d 197, fn. omitted) [citing People v. Williams, 26 Cal. 4th 779, 788 (2001)]. This defines the mental state as a species of negligent conduct, a negligent assault. Where the negligent conduct involves the use of a deadly weapon, here a vehicle, the offense is assault with a deadly weapon. *Thus, any operation of a vehicle by a person knowing facts that would lead a reasonable person to realize a battery will probably and directly result may be charged as an assault with a deadly weapon.*”

Id. (italics added). Therefore, a perpetrator does not need to wish to inflict harm for his or her crime to qualify as an assault. Id. It is sufficient for the perpetrator to engage in negligent conduct that is likely to directly result in a battery. See Id. Similarly, “Vehicular Manslaughter” under California PC Section 191.5, provides that where a vehicle is driven with gross negligence that might produce death, the driver can be convicted of a felony offense.

Here, the driver exercised gross negligence or arguably, recklessness by driving her truck into a busy crosswalk where Mr. **** was trying to walk. Her negligence was recognized by the officers who arrived after Mr. **** was hit and initially charged her with California Vehicle Code 22107, which contains a “reasonable safety” requirement. By negligently or recklessly failing to make his or her turn with reasonable safety, the driver unreasonably disregarded facts that would have lead a person to realize a battery will probably and directly result. Furthermore, the officers did not have to be present or have questioned the driver to ascertain that she had driven into Mr. **** with gross negligence or possible recklessness. The driver’s actions satisfy the element of assault according to Wright where the assault was a “species of negligent conduct.”

With respect to elements [2] and [3], it is well established that a vehicle qualifies as a deadly weapon that can cause serious injury for the purposes of Cal. Pen. § 245(a)(1). See People v. Wright, 100 Cal. App. 4th 704, 706 (2002). Accordingly, Mr. **** was hit with the truck which resulted in serious injuries and with an impact that could have resulted in further injury and / or death. Additionally the California Vehicle Code 20001(c) provides further punishment for a person who flees the scene after Hit and Run with Injury by adding an additional term of imprisonment of five years in the state prison.

Although the East Palo Alto Police Department did not apprehend the driver or pursue charges to reflect the assault and injury caused. However, they recognized the gravity of the crime by including in the collision report that the driver had made an “unsafe turning movement” into Mr. **** and noted the injuries caused. See Police Report. Mr. **** declares that the light was green when he crossed and tried to yell to the driver to stop to no avail. See Applicant’s declaration.

Lastly, the qualifying criminal activity took place in East Palo Alto, 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 Sgt. Jeff Liu, confirms that Mr. **** possessed information concerning the criminal activity and was helpful in the investigation. See Form I-918, Supplement B; see also Applicant’s Declaration. Mr. **** provided statements to the officers regarding the incident. He gave them details regarding the make and the model of the vehicle that struck him. Id.

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 great bodily injury when he was hit by the truck. See Medical Report; see also Applicant’s Declaration. First, he suffered a 4 inch laceration to the right arm in the elbow area and suffered an additional 8 inch laceration to the right leg in the shin area. He also suffered pain to the lower body, waist and blow the waist on his right side. Id. Mr. ****

complains of having blurry or reduced vision as a result of being hit by the truck. See Applicant's Declaration; see also Ophthalmic Letter. Furthermore, Mr. **** complained of feeling alone and upset by not being able to care for himself or help his family due to his injuries. See Applicant's Declaration.

M. **** also suffered economic impact due to the fact that his injuries made him unable to work for over four weeks and then limited his vision and movement. Id. Because his carpentry work relies heavily on the use of his hands and vision, he was not able to perform to his best ability and lost ability to retain and keep employment. He also lost his form of transportation, his bicycle, which was totaled by the accident. See Police Report.

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) 326-6440.

Sincerely,

Amalia Greenberg Delgado

Enclosures

cc: Mr. ****