

July 2020
MPT-1
Drafters' Point Sheet

In re Alice Lindgren

The MPT point sheet addresses the factual and legal points encompassed within this MPT. It presents the expected issues that might be addressed by an examinee in a thorough answer to the problem, but it should not be construed as a model answer.

In re Alice Lindgren

DRAFTERS' POINT SHEET

In this performance test, the examinee works for Neighborhood Immigration Services (NIS), a nonprofit immigration law office, which is representing Alice Lindgren. Lindgren, a native and citizen of Sweden, was robbed about six months ago. She bruised her wrist and suffered abrasions on her face in the attack. She also suffers from PTSD as a result of the robbery. She assisted the police and the prosecution with the investigation and prosecution of the crime. NIS has determined that Lindgren, whose student visa has lapsed, likely qualifies for a U visa. U visas are meant to encourage immigrant victims of crime, who might otherwise be afraid to interact with law enforcement, to report crime and assist in the investigation or prosecution of crime. The examinee's task is to write a persuasive cover letter to United States Citizenship and Immigration Services (USCIS) on behalf of Lindgren's petition for a U visa.

The File contains (1) the instructional memorandum from the supervising attorney, (2) office guidelines for cover letters to USCIS, (3) Lindgren's affidavit, (4) the police report of the incident, (5) a file memorandum on the case's status, (6) a printout from the Crimmigration Experts listserv providing guidance on arguing that robbery is a qualifying crime because it is similar to felonious assault, and (7) a letter from Lindgren's psychologist. The Library contains excerpts from the Immigration and Nationality Act (INA) § 101(a)(15)(U), Title 8 of the Code of Federal Regulations § 214.14, and excerpts from the Franklin Penal Code (FPC).

The following discussion covers all the points the drafters intended to raise in the problem.

I. FORMAT AND OVERVIEW

The examinee's task is to draft a persuasive cover letter to USCIS that will accompany Lindgren's U visa petition and supporting materials. This is a formal business letter to USCIS that also functions as a persuasive "brief" arguing Lindgren's eligibility for a U visa by showing that she meets all the eligibility requirements.

Format of the Letter

The examinee is directed to follow NIS's conventions in drafting cover letters to USCIS:

- Date
- Recipient's Address: U visa petitions are sent to the Franklin Service Center, 119 Exchange Street, Franklin City, FR 33705.
- Subject: the client's name, the client's alien number, or "A number" (if he or she has one), and the number and name of the form or petition being filed. Lindgren's A number, 21-454-988, is indicated on her affidavit.
- Greeting: Address the letter to "Dear USCIS Officer:"
- Body (see below)
- Closing: Tell the immigration officer to contact you with questions. Offer thanks to USCIS for its consideration of the application or petition.
- Signature: "Elizabeth Saylor, Supervising Attorney"
- Copies- cc: [client name]
- Enclosures: Type "Enclosure" or "Enclosures" as appropriate.

Body of the Letter

The instructional memorandum and the cover letter memorandum contain the following guidelines for the body of the letter:

- Begin with the purpose of the letter and state that NIS represents the client in this matter.
- "Brief" the client's eligibility. For each eligibility requirement, state the law and then argue how the facts meet that requirement. Do not include a separate statement of facts but instead use the facts when arguing that the client satisfies each legal requirement. Use a heading for each requirement that clearly identifies the immigration requirement being addressed.
- Provide the relevant legal citations from the INA, Title 8 C.F.R., etc.
- Do not cite any document or evidence that proves the underlying facts because a paralegal will prepare an index of supporting documentary evidence.

Attorney Saylor attempted to persuade Officer Sanders to certify that Lindgren was a victim of aggravated assault in addition to robbery, but he refused on the ground that the defendant was only prosecuted for robbery. This memorandum alerts examinees as to one of the more challenging tasks of this item—arguing that robbery is a similar crime to felonious assault.

II. FACTS

- Alice Lindgren is a 24-year-old native and citizen of Sweden.
- She came to the United States on an F-1 student visa to study in an architecture graduate program at the University of Franklin and to be with her American boyfriend.
- She has not left the United States since she arrived. Her F-1 visa has lapsed.
- On February 5, 2020, around 11:00 p.m., she was robbed across from the campus after she left the school's architecture studio to get a snack at a coffee shop across the street.
- As she crossed the street, Lindgren heard footsteps running up behind her. She turned to see a man running toward her. She started to run but tripped. She fell on the concrete, skinning her face. While she was on the ground, the man pulled her navy blue backpack off her back. The backpack contained her wallet, \$80 in cash, an iPhone, a MacBook Air, and a red cardigan. Lindgren screamed during the attack. The man told her to shut up.
- Lindgren heard the man's footsteps as he ran to jump into the backseat of a car that sped off. She memorized the first three numbers of the car's license plate.
- Lindgren bruised her wrist when trying to catch herself during the fall. She also sustained multiple facial contusions from falling on the concrete. Gravel was embedded in the wounds.
- She returned to the architecture studio where her classmates called the campus police, who then took Lindgren to the 12th Precinct of the Franklin City Police Department.
- Lindgren spent about an hour at the precinct, telling the officers everything that had happened. She described the assailant as a Caucasian middle-aged man with a salt-and-pepper beard, a black jacket, and running shoes. She also described the getaway car as an older, rusted green Toyota Camry, with a license plate number beginning with 406.
- She still had blood on her face when she visited the precinct.
- She saw a doctor the next day. The doctor cleaned and bandaged her facial wounds and diagnosed her with a bruised wrist.
- The assailant was identified a month later when he tried to pawn Lindgren's laptop. Both he and his car matched the descriptions provided by Lindgren.
- The detective asked Lindgren to come to the precinct to see if she could identify the man in a lineup, but she refused because she felt she could not bear to see the man again.

- The man was prosecuted for robbery, and the case went to trial. Lindgren met with the assistant district attorney before trial and then testified at trial even though she was very afraid. She identified the defendant as her attacker. The defendant was convicted.
- Lindgren has suffered a lot of emotional problems since the incident. She is afraid to go out at night. She has trouble sleeping and has nightmares. She is afraid to go to campus and has dropped out of the architecture program.
- Since March 2020, Lindgren has been receiving counseling from psychologist Dr. Charles Einhorn, who specializes in providing counseling for trauma victims.
- Dr. Einhorn believes that Lindgren suffers intense anxious and fearful feelings and thoughts, increasing her isolation. She has withdrawn from classmates; she and her boyfriend broke up.
- Dr. Einhorn also believes that Lindgren suffers from post-traumatic stress disorder (PTSD), which develops in some people who have experienced a shocking or dangerous event. Lindgren experiences flashbacks, bad dreams, and frightening thoughts. She has difficulty sleeping and is easily startled.
- Lindgren has acknowledged to Dr. Einhorn that she experienced mild anxiety related to her performance in the architecture graduate program.
- Dr. Einhorn believes that Lindgren's account of her experience and emotions is credible and that her current intense anxiety and PTSD are directly related to the robbery.
- On April 26, 2020, Franklin City Police Department Officer James Sanders signed Form I-918 Supplement B "U Nonimmigrant Status Certification" indicating that Lindgren was helpful in the investigation and prosecution of the robbery.
- Lindgren would like to remain in the United States and resume her studies at the university.

LAW AND ANALYSIS

- **Substantial Physical or Mental Abuse**
 - Relevant Law
 - [An alien qualifies for a U Visa if]: the alien has suffered substantial physical or mental abuse as a result of having been a victim of 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. No one factor is required to show that the abuse suffered was substantial. Also, the existence of one or more of the factors does not create a presumption that the abuse suffered was substantial. A series of acts taken together may constitute substantial physical or mental abuse even where no single act suffices. 8 C.F.R. § 214.14(b)(1)
- Argument
 - The examinee should argue that Lindgren has suffered substantial physical or mental abuse as a result of the robbery. While Lindgren experienced both physical and mental harm, the examinee needs to make the case that this harm was *substantial* to meet the legal requirements. “Physical or mental abuse” is defined as “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”
 - There was harm to Lindgren’s physical person. Lindgren received multiple facial contusions after falling on the sidewalk. Her face was bleeding when she went back to the architecture studio, and Officer Sanders noted that Lindgren had “multiple contusions and bleeding on left side of face.” Gravel was embedded in her wounds, and her wrist was bruised as a result of the robbery.
 - There continues to be harm to Lindgren’s emotional and psychological soundness. Lindgren has been seeing Dr. Einhorn for counseling since March 2020. She has intense anxious and fearful feelings and thoughts, which have increased her isolation. She dropped out of her graduate program as a result of the robbery. She has emotionally distanced herself from her classmates, and she and her American boyfriend broke up. Lindgren also suffers from diagnosed PTSD as a result of the robbery. She is afraid to

go out at night. She experiences flashbacks and frightening thoughts. She has difficulty sleeping, has nightmares, and is easily startled.

- The examinee should apply the factors from 8 C.F.R. § 214.14(b)(1) to argue that the abuse is substantial.
 - Severity of the perpetrator's conduct. The perpetrator's conduct was arguably severe. He chased and robbed a young woman who was alone late at night, pulling her backpack off. He told Lindgren to "shut up."
 - Severity of the harm suffered. The emotional harm to Lindgren is arguably severe. She was visibly upset and cried during her interview with officers on February 6, 2020. She now suffers intense anxious and fearful feelings and thoughts. She has distanced herself from classmates, she dropped out of the architecture program, and she and her boyfriend broke up. She also suffers from PTSD as result of the robbery, which causes her to experience flashbacks and frightening thoughts and to be easily startled. She has nightmares and sleeps poorly.
 - Duration of the infliction of the harm. The duration of the emotional harm Lindgren has suffered could be argued to be a factor that shows that the abuse is substantial. Lindgren has already experienced emotional harm in the months since the incident with no indication that she is improving.
 - 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. Lindgren already suffered from mild anxiety related to her performance in her architecture graduate program. The robbery has aggravated this pre-existing condition such that she now suffers from intense anxiety and PTSD. Again, there is no indication that her mental condition is improving.
- **Possesses Information Concerning Criminal Activity**
 - Relevant Law
 - [An alien qualifies for a U Visa if]: the alien possesses information concerning qualifying criminal activity. INA § 101(a)(15)(U)(i)(II)
 - An alien is eligible for U-1 nonimmigrant status if he or she demonstrates that he or she 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. 8 C.F.R. § 214.14(b)(2)

- Argument

- Lindgren possesses information concerning the robbery. She experienced the robbery firsthand. She was aware of what was happening throughout, including falling to the ground, having her backpack and its contents (wallet, \$80 cash, iPhone, MacBook Air, cardigan) stolen, and seeing the assailant run away and jump into a getaway car. She provided the police with a description of the perpetrator and the getaway car, including the first three digits of the license plate number, and identified the perpetrator in court.
- The information Lindgren has is credible and reliable. Dr. Charles Einhorn attests in his supporting letter that he finds her account of her experiences and her emotions to be credible. Additionally, the person who attempted to pawn her stolen laptop fit the description she provided to the police and owned a car that matched the description that Lindgren provided.
- Franklin City Police Department Officer James Sanders, the certifying official, determined that Lindgren assisted in the investigation and prosecution of the robbery based on the specific facts she provided. This determination is evident because Sanders signed a Form I-918 Supplement B “U Nonimmigrant Status Certification.”

- **Has Been Helpful, Is Being Helpful, or Is Likely to Be Helpful in Investigating or Prosecuting the Qualifying Crime**

- Relevant Law

- [An alien qualifies for a U Visa if]: 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, . . . , or to other Federal, State, or local authorities investigating or prosecuting qualifying criminal activity. INA § 101(a)(15)(U)(i)(III)
- An alien is eligible for U-1 nonimmigrant status if he or she demonstrates that he or she 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. 8 C.F.R. § 214.14(b)(3)

- Investigation or prosecution refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5)
- U nonimmigrant status certification means Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner crime victim has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(12)
- Form I-918, Supplement B, “U Nonimmigrant Status Certification,” must have been signed by a certifying official within the six months immediately preceding the filing of Form I-918. 8 C.F.R. § 214.14(c)(2)(i)
- Argument
 - For the most part, Lindgren has been helpful to a local law enforcement agency investigating qualifying criminal activity. In the early morning hours of February 6, 2020, right after the robbery, Lindgren went to the 12th Precinct to make a report. She stayed at the precinct for about an hour, telling officers Sanders and Wong “everything [she] knew” about the robbery. She provided a description of the perpetrator and the getaway car and the first three digits of the license plate number.
 - Lindgren has also been helpful to a state prosecutor in prosecuting qualifying criminal activity. She met with the assistant district attorney about the robbery before the trial. She “stoic[ally]” testified at the trial and identified the defendant as her assailant, even though she was afraid.
 - Lindgren’s helpfulness ultimately aided law enforcement in identifying and prosecuting the defendant. A man fitting the description she provided (a middle-aged Caucasian man with a salt-and-pepper beard) who owned a car similar to the one she saw at the crime scene (an older rusty green Toyota Camry) attempted to pawn the laptop that was in Lindgren’s stolen backpack. Aided by Lindgren’s description, the police and prosecutor were able to identify and successfully prosecute the defendant.
 - Examinees should acknowledge that despite the detective’s request, Lindgren refused to attend a lineup including the defendant. Examinees should argue that even though she did not participate in the lineup, she was helpful overall.

- Lindgren has a Form I-918 Supplement B “U Nonimmigrant Status Certification,” signed by Officer Sanders, confirming that she was helpful in the investigation and prosecution of the robbery. This form was signed on April 26, 2020, which is within the six-month deadline set forth in 8 C.F.R. § 214.14(c)(2)(i).
- **Criminal Activity Violated the Laws of and Occurred in the United States**
 - Relevant Law
 - [An alien qualifies for a U Visa if]: the criminal activity . . . violated the laws of the United States or occurred in the United States. INA § 101(a)(15)(U)(i)(IV)
 - The qualifying criminal activity must have occurred in the United States. 8 C.F.R. § 214.14(b)(4)
 - Argument
 - The criminal activity, stealing Lindgren’s backpack and its contents, violated Franklin Penal Code § 29 Robbery. The jury found the defendant guilty of robbery and thus that he violated the law.
 - This crime occurred in Franklin City, Franklin, which is in the United States.
- **Qualifying Crime**
 - Relevant Law
 - [T]he qualifying criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . felonious assault INA § 101(a)(15)(U)(iii)
 - Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: . . . felonious assault 8 C.F.R. § 214.14(a)(9)
 - The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities. 8 C.F.R. § 214.14(a)(9)
 - The Crimmigration Experts Forum listserv printout provides guidance about whether robbery can be considered a qualifying crime as a “similar activity” to felonious assault. While not authoritative, this discussion can be used to formulate successful arguments that Lindgren meets the qualifying crime requirement, especially as USCIS has not provided any guidance on the issue. Through the listserv dialogue, we learn that (a) it

is extremely difficult to successfully argue “similar crimes”; (b) you must argue that the nature and elements of robbery are similar to the nature and elements of felonious assault, with “nature of the crime” meaning the inherent character of the crime as defined by the statute; (c) the proper inquiry is not an analysis of the facts but a comparison of the nature and elements of the crime that is investigated or prosecuted and the enumerated crime; (d) some robbery cases have been approved as felonious assault qualifying crimes; (e) in Olympia and other states, robbery cases have not been approved as felonious assault qualifying crimes because the elements for robbery and felonious assault are too different.

- FPC § 22, Aggravated Assault: (a) A person commits an offense if the person: (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly; or (2) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. (b) An offense under this section is a felony.
- FPC § 29, Robbery: (a) A person commits an offense if, in the course of committing theft with intent to obtain or maintain control of the property, the person: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. (b) An offense under this section is a felony.
- Argument
 - Robbery is not an enumerated qualifying crime. Thus, the examinee needs to argue that Robbery under FPC § 29 is a qualifying crime as a “similar activity” to felonious assault, which in Franklin is Aggravated Assault under FPC § 22.
 - Note that Aggravated Assault would constitute “felonious assault” under the INA and 8 C.F.R. because FPC § 22(b) indicates that Aggravated Assault is a felony.
 - To show that Robbery is a “similar activity” to Aggravated Assault in Franklin, the examinee must argue that the nature and elements of Robbery are substantially similar to the nature and elements of Aggravated Assault.
 - The elements of the crimes of Robbery and Aggravated Assault are similar. The language used in the elements under FPC § 22(a)(1) and FPC § 29(a)(1) is very similar. FPC § 22(a)(1) (Aggravated Assault) requires that the offender “attempts to cause

serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly.” FPC § 29(a)(1) (Robbery) requires that the offender “intentionally, knowingly, or recklessly causes bodily injury to another.” Criminal liability arises under both provisions for intentional, knowing, or reckless conduct that causes bodily injury to another person. Both sections use the identical language “intentionally, knowingly, or recklessly.” FPC § 22(a)(1) (Aggravated Assault) refers to “causes serious bodily injury to another,” and FPC § 29(a)(1) (Robbery) refers to “causes bodily injury to another.” Both sections refer to causing bodily injury to another.

- The examinee should argue that the nature of Robbery and Aggravated Assault is similar. Even though FPC § 22(a)(1) (Aggravated Assault) requires “serious bodily injury” and FPC § 29(a)(1) (Robbery) requires only “bodily injury,” both sections seek to deter and punish conduct causing bodily injury. Similarly, both sections seek to deter and hold accountable those who commit or attempt to commit intentional, knowing, or reckless acts that cause bodily injury.
- The examinee should address the fact that in Franklin, Robbery requires “committing theft with intent to obtain or maintain control of the property,” while Aggravated Assault has no requirement related to theft. Additionally, an astute examinee might recognize that Aggravated Assault includes an attempt to intentionally, knowingly, or recklessly cause injury to another while Robbery does not include attempted acts. The examinee should argue that nonetheless, the elements and nature of the crimes of Robbery and Aggravated Assault are substantially similar under the law of Franklin, and thus Robbery is a qualifying crime under INA § 101(a)(15)(U)(iii) and 8 C.F.R. § 214.14(a)(9).
- Excellent examinees will indicate that both FPC § 22 and FPC § 29 have alternative elements, meaning that (1) or (2) can apply but both are not required. Therefore, a comparison can be made between just part (1) or (2) of each statutory provision.
- In keeping with the guidance provided by the Crimmigration Experts listserv, the examinee should not address the underlying facts of the robbery of Lindgren or any facts dealing with Robbery or Aggravated Assault.