



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 22395078

Date: AUG. 16, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she was the victim of qualifying criminal activity. The matter is now before us on appeal. Upon *de novo* review, we will remand the matter to the Director to issue a new decision.

I. LAW

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

A “victim of qualifying criminal activity” is defined as an individual who has “suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). “Qualifying criminal activity” is “that involving one or more of” the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity in violation of Federal, State, or local criminal law.” Section 101(a)(15)(U)(iii) of the Act; 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” at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

II. ANALYSIS

The Petitioner filed her U petition in July 2016 with a Supplement B certifying that in 2015, she was the victim of “Felony Assault.” When asked to provide the specific statutory citations

investigated or prosecuted, the Supplement B listed sections 163.165¹ (assault in the third degree), 813.010 (driving under the influence), 811.140 (reckless driving), 163.195 (recklessly endangering another person), and 164.354 (criminal mischief in the second degree) of the Oregon Revised Statutes Annotated (O.R.S.). When describing the criminal activity being investigated or prosecuted, the Supplement B indicated that “the victim was struck in her vehicle by the defendant’s vehicle. The defendant was intoxicated and caused serious injury to the victim. The defendant was arrested at the scene for felony Assault III, DUII, Criminal Mischief and for recklessly endangering another person.”

The Director denied the U petition. The Director stated that driving under the influence and reckless endangerment do not constitute the qualifying crime of felonious assault for U nonimmigrant status.

On appeal, the Petitioner asserts, through counsel, that she was a victim of felony assault in the third degree under O.R.S. section 163.165 and, therefore, it was a qualifying crime (felonious assault). The Petitioner further contends that the Supplement B was certified to show that she was the victim of criminal activity involving felonious assault and other crimes. In addition, the Petitioner states that the conviction documents submitted in support of the U petition show that the defendant was convicted of assault in the third degree under O.R.S. section 163.165. The Petitioner states that “USCIS either failed to see this or ignored . . . the conviction documents record provided in support of the I-918.”

After a careful review of the entire record, we agree with the Petitioner that assault in the third degree under O.R.S. § 163.165 is a qualifying crime under the Act. The statute states the following:

- (1) A person commits the crime of assault in the third degree if the person:
 - (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;
 - (b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;
 - (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
 - (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, “public transit vehicle” has the meaning given that term in ORS 166.116;
 - (e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;

¹ In part 3.3 of the Supplement B, the certifying official indicated “163.65.” However, this appears to be a typographical error because there is not an Oregon statute for 163.65. Moreover, the court documents in the record list O.R.S. section 163.165 (assault in the third degree) as one of the charges against the defendant.

- (f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member while the other person is acting in the course of official duty;
- (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical services provider, as defined in ORS 682.025, while the emergency medical services provider is performing official duties;
- (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger; or
- (i) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi.

O.R.S. § 163.165. Here, the record shows the Petitioner was a victim of assault in the third degree. Specifically, the defendant recklessly caused serious physical injury to the Petitioner under circumstances manifesting extreme indifference to the value of human life. We therefore find that the Petitioner has established she was a victim of felonious assault, a qualifying crime under the Act, and we withdraw the Director's finding to the contrary.

Because U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the Petitioner is a victim of qualifying criminal activity, we will remand the matter for the Director to determine whether the Petitioner has met her burden of establishing the remaining eligibility criteria for U nonimmigrant status and for the Director to consider all of the evidence in the record in its entirety.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.