



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

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

In Re: 10206692

Date: AUG. 19, 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), and the matter is now before us on appeal. On appeal, the Petitioner submits a brief. We review the questions in this matter de novo. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand to the Director for the issuance of 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.

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).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a “Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority.” Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B must certify that the petitioner was a victim of qualifying criminal activity that the certifying agency is investigating or prosecuting, possesses information about the crime, and “has been, is being, or is likely to be helpful” in the investigation or prosecution of the crime. *Id.*<sup>1</sup>

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<sup>1</sup> The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and gives the certifying agency the opportunity to describe the crime, the victim’s helpfulness, and the victim’s injuries.

The implementing regulations define “certifying agency” to include a “Federal, State, or local law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the investigation or prosecution of a qualifying crime” and “certifying official” to mean the “head of certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or . . . [a] Federal, State, or local judge.” 8 C.F.R. § 214.14(a)(2), (3). The regulatory definition of “investigation or prosecution” refers to the “detection . . . of a qualifying crime . . . , as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime . . . .” 8 C.F.R. § 214.14(a)(5).

In these proceedings, the burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Factual and Procedural History

The Petitioner filed her U petition in February 2015 and, as initial evidence, submitted a Supplement B certified in December 2014 by a family court judge, sitting in the [redacted] Circuit Court in [redacted] Kentucky (certifying official). In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the certifying official checked the box for “Domestic Violence.” In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying official cited to sections 403.725 and 403.745 of the Kentucky Revised Statutes Annotated (Ky. Rev. Stat. Ann.), within the state’s civil domestic relations code and pertaining to petitioning for, and granting of, orders of protection based on domestic violence and abuse. The certifying official further cited to section 508.030 of the Ky. Rev. Stat. Ann., within the state’s criminal code and corresponding to the crime of assault in the fourth degree. Ky. Rev. Stat. Ann. §§ 403.725, 403.745, 508.030 (West 2009). In Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, the certifying official stated:

Former live-in paramour of [the Petitioner] stole her money, computer and video camera, threatened to kill the father of her then three-year old child on more than one occasion. He threatened to put the [Petitioner]’s picture on the internet. He hit her, shoved her, and was verbally abusive to her. His actions were assaultive, put her in fear of imminent phys[ic]al harm and were found by the Court to constitute domestic violence.

In Part 4.5, which describes the Petitioner’s helpfulness, the certifying official added:

[The Petitioner] reported the domestic violence to the Family Court. [The Petitioner] testified to the domestic violence in court. Perpetrator gave testimony by telephone.

The court found that the [Petitioner] had established eligibility for an Order of Protection because perpetrator was a threat to her safety. . . .

Accompanying the Supplement B was the domestic violence motion, summons, and the order issued after the hearing. In the motion to the judge, the Petitioner stated, in relevant part:

I am filing against my ex-boyfriend . . . . When he left he took my computer, video camera, and \$1,200.00. He threatened to kill the father of my 13 month old child. I have not seen him since . . . . He again called saying he would kill the father of my child. He said he would put my picture on the internet. When he lived with me he did hit and shove me. He was verbally abusive to me. I'm afraid he will return to kill the father of my child. I want him to stay away.

The Director issued a request for evidence (RFE), informing the Petitioner that obtaining a protective order does not qualify as reporting criminal activity, the crime indicated on the Supplement B is not similar to the qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act, and the judge who signed the Supplement B is not a recognized certifying official from a certifying agency. In response to the RFE, the Petitioner asserted that the cited statutes in the Supplement B refer to domestic violence, which is a qualifying crime. She explained that there is no specific statute criminalizing domestic violence in Kentucky, however, “in instances of repeated domestic violence, a conviction [for assault in the fourth degree] under [section] 508.030 [of the Ky. Rev. Stat. Ann.] against a family member may be enhanced to a felony, under the provisions of [section] 508.032 [of the Ky. Rev. Stat. Ann.]” See Ky. Rev. Stat. Ann. § 508.032 (providing that if a person commits a third or subsequent offense of assault in the fourth degree, the relationship between the perpetrator and the victim of each offense meets the definition of family member, then the person may be convicted of a Class D felony) (West 2009). As a result, the Petitioner argued that family court judges have an important role in the detection of criminal activity, such as domestic violence. The Director denied the U petition, repeating many of the explanations contained in the RFE. According to the decision, the evidence submitted did not support that a recognized certifying official—here, the judge presiding over a civil action—detected or investigated a qualifying crime. The Director explained that detection of criminal activity is within the scope of a law enforcement officer’s investigative duties and judges do not investigate crimes or prosecute individuals. The Director further concluded the record did not support a determination that the judge detected or investigated section 508.030 of the Ky. Rev. Stat. Ann. On appeal, the Petitioner asserts the judge had the authority to, and indeed did, detect the qualifying crime of domestic violence as perpetrated against her.<sup>2</sup>

Upon de novo review, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that the judge who certified the Supplement B in her case detected and investigated the qualifying crime of domestic violence as contemplated by 8 C.F.R. § 214.14(a)(5) and (a)(9).

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<sup>2</sup> The Petitioner included one of our non-precedent decisions in support of these assertions. Non-precedent decisions do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c) (discussing precedent decisions as binding on agency employees). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

## B. Certifying Agency and Certifying Official

The regulatory definitions of both “certifying agency” and “certifying official” similarly and broadly include a “Federal, state, or local judge.” 8 C.F.R. § 214.14(a)(2), (3). However, the Petitioner must further establish that the certifying agency “has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.” 8 C.F.R. § 214.14(a)(2). The Petitioner refers to section 403.750 of the Ky. Rev. Stat. Ann., which authorizes the court to issue a protective order following a hearing if it finds by a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur. Ky. Rev. Stat. Ann. § 403.750 (West 2009). The Petitioner notes that because domestic violence is defined civilly, family court judges play a critical role in the detection of domestic violence and the crimes that often accompany a relationship characterized by it. See Ky. Rev. Stat. Ann. § 403.715 (West 2009) (interpreting domestic violence and abuse statutes to “allow persons who are victims of domestic violence and abuse to obtain effective, short-term protection against further violence and abuse in order that their lives will be as secure and as uninterrupted as possible”). Further, the definition of “investigation or prosecution” includes both “detection . . . as well as . . . prosecution, conviction, and sentencing” within its purview and without restriction as to what official or entity oversees or is responsible for each phase of the investigatory or prosecutorial process. 8 C.F.R. § 214.14(a)(5).

Neither the Act nor the implementing regulations delineate detection of criminal activity as falling solely within the scope of a law enforcement officer’s duties, as opposed to those of a Federal, state, or local judge. In line with this inclusion, and as cited by the Petitioner on appeal, agency guidance provides that “[a] judge may sign the certification based on having conducted the sentencing in a criminal case. A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which they presided.” See U.S. Department of Homeland Security, U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies, at 3, [https://www.uscis.gov/sites/default/files/document/guides/U\\_Visa\\_Law\\_Enforcement\\_Resource\\_Guide.pdf](https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf) (last accessed Aug. 19, 2022); see also Interim Rule, New Classification for Victims Criminal Activity: Eligibility for “U” Nonimmigrant Status (Interim Rule), 72 Fed. Reg. 53,014, 53,020 (Sept. 17, 2007) (stating that the term “investigation or prosecution” should be “interpreted broadly”). Based on the above, the family court judge in this case had the responsibility to detect and investigate domestic violence and if found, issue a protective order. According to the Supplement B, the certifying official presided over a hearing for a protective order and after hearing the testimony of the Petitioner and her ex-boyfriend, granted the Petitioner’s request. We therefore consider the family court judge, who signed the Supplement B, a certifying official with the responsibility to detect and investigate domestic violence. The Director’s statements to the contrary are withdrawn.

## C. Qualifying Criminal Activity

The Petitioner must establish that the certifying agency—in this case, the  Circuit Court—in fact detected, investigated or prosecuted qualifying criminal activity as perpetrated against the petitioner. Section 101(a)(15)(U)(i)(III) of the Act; see also 8 C.F.R. § 214.14(b)(3) (requiring helpfulness “to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based . . .”). The record supports a determination that the judge detected domestic violence as defined in Kentucky’s civil code. Domestic violence and abuse

“means physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple.” Ky. Rev. Stat. Ann. § 403.720 (West 2009). “Family member” and “[m]ember of an unmarried couple” include, in pertinent part, “a member of an unmarried couple who are living together or have formerly lived together.” *Id.* In the Supplement B, the certifying official explained the elements of domestic violence that he identified, stating that the Petitioner’s ex-boyfriend, while living with her, “hit her, shoved her, and was verbally abusive to her. His actions were assaultive, put her in fear of imminent phys[ic]al harm[,]” and he “was a threat to her safety.” Therefore, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that the certifying official detected domestic violence as having been perpetrated against her.

However, as explained above, while domestic violence is a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act, Kentucky law defines domestic violence in its civil code. Domestic violence is therefore criminally prosecuted based on the specific crime(s) underlying it, i.e., physical assault, sexual assault, or spousal rape.<sup>3</sup> Language from the preamble to the U nonimmigrant status regulations recognizes that there is a “myriad of behaviors that can constitute domestic violence,” which the list of qualifying crimes seeks to “represent” while also allowing for “similar activity in violation of Federal, State or local criminal law.” Interim Rule, 72 Fed. Reg. at 53015. On the Supplement B, the certifying official listed, in addition to civil provisions dealing with the issuance of protective orders based on domestic violence, the crime of assault in the fourth degree under section 508.030 of the Ky. Rev. Stat. Ann. as investigated or prosecuted as perpetrated against the Petitioner. Assault in the fourth degree is met when a person “intentionally or wantonly causes physical injury to another person.” Ky. Rev. Stat. Ann. § 508.030 (West 2009). In turn, physical injury is defined as “substantial physical pain or any impairment of physical condition.” Ky. Rev. Stat. Ann. § 508.080 (West 2009). “Impairment of physical condition” is not defined in statute, but case law interprets it to mean “injury.” *Meredith v. Commonwealth*, 628 S.W.2d 887, 888 (Ky. App. 1982). According to the submissions below, the certifying official was aware of the Petitioner being hit and shoved, threatened, and verbally abused, as these assertions were included in her motion to the court for a protective order. The judge then held a hearing during which he heard testimony from the Petitioner as well as her ex-boyfriend and determined that his actions were “assaultive . . . [and] put her in fear of imminent phys[ic]al harm” and that he “was a threat to her safety.” (emphasis added). The threats when combined with her description of being hit and shoved evidenced the Petitioner’s ex-boyfriend had the requisite intent to harm her, and the certifying official’s determination that the ex-boyfriend posed a threat to her safety further supports his intent. While the certifying official does not specifically state that the Petitioner suffered substantial pain or was injured, he described her being hit and shoved, and cited to section 508.030 of the Ky. Rev. Stat. Ann. as a statute investigated as perpetrated against her. Finally, the evidence in the record is consistent with, and supports, the findings contained in the Supplement B. Accordingly, and on the basis of the above, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that the judge detected and investigated assault in the fourth degree under section 508.030 of the Ky. Rev. Stat. Ann. as perpetrated against

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<sup>3</sup> One exception is section 508.032 of the Ky. Rev. Stat. Ann., “assault of family member or member of an unmarried couple” which is the enhancement to section 508.030 of the Ky. Rev. Stat. Ann. As stated above, a person is guilty of a felony offense after committing a third or subsequent offense of assault in the fourth degree within five years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple. *Id.*

her. Assault in fourth degree under section 508.030 of the Ky. Rev. Stat., when perpetrated by a family member or member of an unmarried couple as defined under Kentucky law, is a statutory equivalent to the qualifying crime of domestic violence as contemplated by section 101(a)(15)(U)(i) of the Act and 8 C.F.R. § 214.14(a)(9).

The Director did not analyze whether the Petitioner established that she was, in fact, a victim of the crime certified as detected by the judge, a necessary element to establish the remaining eligibility requirements for U nonimmigrant status. See section 101(a)(15)(U)(i)(I) of the Act (requiring substantial physical or mental abuse as a result of having been “a victim of [qualifying] criminal activity”); 8 C.F.R. § 214.14(a)(14) (defining “victim of qualifying criminal activity”), (b)(1) (reiterating the requirement of suffering “substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity”), (c)(2)(ii)-(iii) (requiring evidence to establish that “the petitioner is a victim of qualifying criminal activity” and a “signed statement by the petitioner describing the facts of victimization”). Accordingly, we will remand the matter for the Director to determine whether the Petitioner has met her burden of establishing this and the remaining eligibility criteria for U nonimmigrant status.

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