



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

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

In Re: 22739565

Date: DEC. 2, 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. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and petitioners bear the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the qualifying criminal activity.¹ Section 214(p)(1)

¹ 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.

of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

In May 2016, the Petitioner filed his U petition with a Supplement B signed and certified by a lieutenant for the [redacted] Sheriff's Department in [redacted] California (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Other: Robbery." The certifying official cited to section 211 (robbery) of the California Penal Code (Cal. Penal Code) as the specific statutory citation detected, investigated, or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that in [redacted] 2015, the Petitioner "was the victim of a battery and attempted strongarm robbery. He was chased and physically assaulted by two assailants. Please see the attached police report." With respect to any known or documented injury, the certifying official detailed that the Petitioner "complained of injury to his right leg. Please see the attached police report." The police records accompanying the Supplement B also contain a case narrative which mirrors the information in the Supplement B, and list the crime investigated as "robbery strongarm" under section 211 of the Cal. Penal Code.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity, or a victim of a crime that is "substantially similar to qualifying crimes found within regulations."

On appeal, the Petitioner maintains he was the victim of battery and attempted strong arm robbery and, whereas an assault is an attempt to commit violence, the battery he experienced was actual violence that occurred in the commission of an attempted robbery. Thus, the Petitioner asserts that the "felonious nature of any robbery, coupled with a battery, should properly be accepted for purposes of the U visa because the elements and nature of the offenses are substantially similar to the qualifying criminal activity of felonious assault as required for the U visa." The Petitioner also contends that he was the victim of a conspiracy, a qualifying crime for purposes of the U visa.

As explained below, the record establishes that law enforcement detected, investigated, or prosecuted strong arm robbery under section 211 of the Cal. Penal Code and this offense is not, does not involve, and is not substantially similar to any qualifying crime enumerated at section 101(a)(15)(U)(iii) of the Act.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

The Act requires U petitioners to demonstrate that they have “been helpful, [are] being helpful, or [are] likely to be helpful” to law enforcement authorities “investigating or prosecuting [qualifying] criminal activity,” as certified on a Supplement B from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term “investigation or prosecution” of qualifying criminal activity includes “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).

In summary, the Petitioner stated to the [redacted] Sheriff’s Department that in [redacted] 2015, he was in front of his residence when two unknown males approached him demanding money or they would physically assault him. As the Petitioner ran to a nearby neighbor’s home, he was “kicked in the calf area of his right leg and grabbed on the tricep area of the right arm by one of the suspects.” He waited inside the neighbor’s home until he believed the two males left the area.

At the outset, while we do not diminish the fear the Petitioner may have experienced during, and as a result of, the incident, evidence describing what hypothetically could have been charged as a qualifying crime as a matter of fact is not sufficient to establish a petitioner’s eligibility absent evidence that the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, *see* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007), the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency 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 . . .”).

More specifically, as noted by the Director, the Petitioner has not established that felonious assault was detected, investigated, or prosecuted by law enforcement as perpetrated against him. California law defines assault as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2022). For an assault to be classified as a felony, however, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. *See e.g.*, Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2022) (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults).

As detailed above, the original Supplement B submitted with the Petitioner’s U petition and the remaining evidence in the record do not reference any felonious assault provision under California law or otherwise indicate that felonious assault was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. While we acknowledge that in part 3.1 of the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault,” a certifying official’s completion of part 3.1 is not conclusive evidence that a petitioner is the victim of qualifying criminal activity. Part

3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Neither the original Supplement B nor the police report cites to or references any felony-level assault provision under California law as detected, investigated, or prosecuted as perpetrated against the Petitioner.

Regarding the Petitioner's arguments on appeal that the Petitioner was also the victim of a conspiracy, a qualifying crime for purposes of the U visa, the preponderance of the evidence does not show that law enforcement detected, investigated, or prosecuted conspiracy against the Petitioner. As detailed above, the Supplement B did not reference any conspiracy provision under California law or otherwise indicate that conspiracy was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Nor did the accompanying police report reference the detection, investigation, or prosecution of any type of conspiracy against the Petitioner.

Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault or conspiracy. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted robbery under section 211 of the Cal. Penal Code.

C. Robbery under California Law is Not Substantially Similar to the Qualifying Crimes of Felonious Assault or False Imprisonment

When a certified offense is not a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act (providing that 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"); 8 C.F.R. § 214.14(a)(9) (providing that 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). Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction's statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. *Id.* Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense "involved," or was "substantially similar" to, a "qualifying crime or qualifying criminal activity" as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9).

At the time of the incident against the Petitioner, California law defined robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." Cal. Penal Code § 211. We acknowledge that robbery under section 211 of the Cal. Penal Code is a felony offense. However, robbery is otherwise distinct in its elements from California's equivalents to the qualifying crime of felonious assault. Robbery requires a taking of personal property as a required element of the offense, which is not required under any of California's felonious assault provisions. Also unlike the felonious assault provisions, robbery does not require the use of a weapon, force likely to produce great bodily injury,

or any other aggravating circumstance, and it can be committed “without attempting to inflict violent injury, and without the present ability to do so” *People v. Wolcott*, 665 P.2d 520, 525 (Cal. 1983).

Based on the foregoing, the Petitioner has not established that the nature and elements of robbery are substantially similar to a felonious assault under California law.

D. The Remaining Eligibility Criteria for U-1 Classification

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. As the Petitioner has not established that he was the victim of qualifying criminal activity, or an offense that is substantially similar to a qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.