



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

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

In Re: 23090608

Date: DEC. 19, 2022

Appeal of Vermont 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 Vermont Service Center (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was the victim of a qualifying crime. Subsequently, the Director granted a motion to reopen, but denied the Petitioner’s U petition. The matter is now before us on appeal. On appeal, the Petitioner asserts that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. 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. 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).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners' helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). 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, 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

The Petitioner filed his U petition in July 2015 with a Supplement B signed and certified by an officer of the [REDACTED] Police Department (certifying official). The certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault," "Attempt to commit any of the named crimes" and "Witness Tampering."¹ The certifying official listed California Penal Code (Cal. Penal Code) sections 186.22 and 246.3(a), which are the statutory provisions for gang enhancement and negligent discharge of a firearm, respectively, as the specific statutes investigated or prosecuted as perpetrated against the Petitioner. When describing the criminal activity being investigated or prosecuted, the certifying official wrote, "see statement." In his statement, the Petitioner explained that in [REDACTED] 2014, while he was outside with family members, he noticed a van driving around. The van suddenly stopped, the window rolled down and a young man (the perpetrator) asked the Petitioner what gang he was from. The Petitioner stated that he was not "from any gang," and the perpetrator "got mad and started shooting all over the place."

In November 2019, the Director issued a request for evidence (RFE), providing the Petitioner an opportunity to submit evidence of substantial physical or mental abuse as a result of qualifying criminal activity. In addition, the Director noted that the certifying official was not the head of the certifying agency or a person in a supervisory role that was specifically designated by the head of the certifying agency to issue a Supplement B, and requested evidence that they had the authority to do so, or in the alternative, a newly executed Supplement B. In response to the RFE, the Petitioner provided, among other things, a newly executed Supplement B certified by Detective Supervisor M-C-² checking the box that he was the victim of criminal activity involving or similar to "Felonious Assault." Unlike in the original Supplement B, the new certifying official also selected the box for "Murder."³ M-C- listed Cal. Penal Code section 246.3 as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. M-C- described the criminal activity as follows: "[The Petitioner] observed a known gang member shooting a handgun within city limits. The suspect approached [the Petitioner], shot several more times, then pointed the gun at [the Petitioner] (Assault with a Deadly Weapon)." The Petitioner also submitted a 2015 mental status examination where he was diagnosed with major depressive disorder, recurrent and severe without psychotic features,

¹ On appeal, the Petitioner does not argue that he is a victim of witness tampering or murder. We therefore do not reach this issue, particularly given our determination that the Petitioner has demonstrated that he is a victim of the qualifying crime of felonious assault.

² We use initials to protect the identity of individuals.

³ See footnote one.

generalized anxiety disorder and post-traumatic stress disorder; his 2019 declaration; and a letter from his spouse.

In August 2020, the Director denied the U petition concluding that the Petitioner did not establish that M-C- was designated to execute a Supplement B, and he was not a victim of qualifying criminal activity because the crimes investigated and/or prosecuted were Cal. Penal Code sections 186.22 and 246.3(a). The Petitioner filed a motion to reopen which the Director granted. With the motion, the Petitioner submitted a letter from the Domestic Violence and U-Visa Coordinator (Coordinator) at the [REDACTED] Police Department which confirmed that M-C- was authorized to certify a Supplement B. Therefore, the Petitioner has established that the Supplement B was signed and certified by an authorized certifying official. In the same letter, the Coordinator noted that the [REDACTED] District Attorney's Office filed the following charges against the perpetrator: Cal. Penal Code sections 246.3, 245(a)(2) assault with deadly weapon or force likely to produce great bodily injury and 25400(a)(1) having a concealed firearm in a vehicle.

In January 2022, the Director denied the U petition finding only that Cal. Penal Code sections 186.22 and 246.3(a) were not qualifying criminal activities, and thus the Petitioner did not meet the remaining eligibility requirements. On appeal, the Petitioner contends that he was the victim of felonious assault, and the Director did not examine all the evidence in the record.

B. The Petitioner Is the Victim of Qualifying Criminal Activity

The Act requires U petitioners to demonstrate 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). 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 (U Interim Rule), 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 . . .”).

Assault in California is defined as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. Cal. Penal Code section 240. Section 245(a) of the Cal. Penal Code describes various assault offenses that are punishable as felonies due to the presence of aggravating factors, including when an assault is committed with a firearm under subsection (a)(2), as is the case here. *See* Cal. Penal Code section 245(a)(2) (“Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars . . . and imprisonment”). Furthermore, the certifying officials consistently indicated that criminal activity involving or similar to felonious assault had been

investigated or prosecuted as perpetrated against the Petitioner on both Supplements B. Additionally, in the newly executed Supplement B submitted in response to the RFE, M-C- noted that a gun was pointed at the Petitioner and that it was akin to Assault with a Deadly Weapon. A subpoena in the record indicates that the Petitioner was called to “testifiro (*sic*) as vict/witness on shooting” which is consistent with assault with a firearm under California law. The record reflects that the Petitioner gave a statement to the police, he was subpoenaed for trial, he testified, and the perpetrator was convicted under Cal. Penal Code sections 245(a)(2) and 246.3. Accordingly, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected felonious assault under Cal. Penal Code section 245(a)(2) as perpetrated against him, which is a qualifying crime. We withdraw the Director’s decision to the contrary.

C. 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 overcome the Director’s determination and has established that he is the victim of qualifying criminal activity, we remand the matter to the Director to determine in the first instance whether he has satisfied the remaining criteria at section 101(a)(15)(U)(i) of the Act.

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