



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

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

In Re: 18295485

Date: FEB. 3, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity at 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 Vermont Service Center Director denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that she did not establish she was a victim of qualifying criminal activity. The denial of the Petitioner’s U petition is now before us on appeal. A petitioner bears the burden of proof 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). We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. 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) 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

The Petitioner filed their U petition in June of 2015 accompanied by a Supplement B in which the certifying official checked the Other box under Part 3.1 indicating that the Petitioner was the victim of criminal activity involving or similar to robbery. Under Part 3.3, the official left the portion blank where they normally identify the statutory citation for the criminal activity being investigated or prosecuted. Within the narrative portion characterizing the criminal activity, the official instructed readers to “see attached report.” It appears the certifying official was referencing the Police’s Case Detail Report that characterized the incident as a robbery.

That police report indicates that the Petitioner was working in a convenience store when she observed someone that she believed was stealing merchandise. The police report states that the Petitioner observed the individual placing merchandise in their backpack, she contacted the police department, then approached the individual as they walked towards the door and informed them that they must remain in the store or that she would contact the police. The police report reflects that the perpetrator then stopped at the door, and after they exchanged words, the Petitioner grabbed the backpack from the individual and removed the merchandise again advising them that they must remain in the store because the police were coming. The report explains that at that time the female perpetrator grabbed the backpack and slapped the Petitioner in the face with an open hand, at which time the Petitioner let go of the backpack and the female left the store and fled. The police report also reflects that the Petitioner did not need medical attention and had no visible injury at the scene. The police report does not contain any information relating to the Petitioner’s state of mind, her ability to communicate in English, or any other physical injuries that she may have sustained during the incident.

According to the Petitioner’s personal statement they submitted with the petition, the perpetrator not only slapped her in the face, but she also pushed the Petitioner to the floor, pulled her hair from the back of her head, grabbed her face and pushed her back to the floor as she was trying to gain her balance. The Petitioner explains that the attack left her feeling dizzy and numb for a couple of minutes. She also claims that she was unable to communicate effectively with the police officer because she did not speak English well.

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.

The Director denied the U petition, concluding that the Petitioner did not establish that she was the victim of qualifying criminal activity. The Director noted that robbery is not a qualifying crime and determined that the Petitioner had not established that the nature and elements of robbery under New Jersey law are substantially similar to a qualifying criminal activity. On appeal, the Petitioner argues the Director erred in determining she was not the victim of criminal activity and they failed to consider factors that caused the crime of robbery to rise to the level of other crimes such as felonious assault, false imprisonment, and unlawful criminal restraint. The Petitioner also argues that robbery is substantially similar to felonious assault under New Jersey law.

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

The Act requires U petitioners to demonstrate their helpfulness 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*, 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 . . .”).

On appeal, the Petitioner argues that the factual circumstances of the offense in question establish that she was the victim of an aggravated assault (N.J. Stat. Ann. § 2C:12-1.b(1)), false imprisonment (N.J. Stat. Ann. § 2C:13-3), and criminal restraint (N.J. Stat. Ann. § 2C:13-2). However, evidence describing what may appear to be—or hypothetically could have been charged as—a qualifying crime is not sufficient to establish a petitioner’s eligibility. Instead, the record must reflect that the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against a petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5). Here, as we note above, neither the Supplement B nor any law enforcement record cite to any of the three crimes under New Jersey statutes (aggravated assault, false imprisonment, or criminal restraint) that the Petitioner relies on as the activity investigated as perpetrated against her. In Part 3.1 of the Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to “Other” and did not otherwise check any box indicating that the Petitioner was the victim of any qualifying crime.

We acknowledge that Part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offenses 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). However, Part 3.3 of the Supplement B specifically requests the citation for the crime

investigated or prosecuted, and in this case that portion is left blank and does not provide citations to any criminal offense under New Jersey law. Moreover, the remaining evidence in the record does not cite to or reference section 2C:15-1 of the New Jersey Statutes Annotated or any other provision of New Jersey law. The Petitioner bears the burden to demonstrate eligibility by a preponderance of the evidence, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Sections 101(a)(15)(U)(i)(III), 214(p)(1), and 291 of the Act; 8 C.F.R. §§ 214.14(a)(5) and (c)(4). The Petitioner's assertions alone are not sufficient to meet her burden in this regard.

New Jersey state law classifies aggravated assault in which one attempts to cause serious bodily injury to another or causes such an injury purposely or knowingly as a second-, third-, or fourth-degree crime. N.J. Stat. Ann. § 2C:12-1.b. Such an assault is equivalent to a qualifying crime of felonious assault. On appeal, the Petitioner argues that during the robbery, the perpetrator committed an aggravated assault on her, even though the Supplement B and the police report do not reflect that law enforcement detected, investigated, or prosecuted such an assault. She further claims that her personal statement described an aggravated assault committed against her and it is her statement that establishes such an offense occurred. The Supplement B relies on the information in the police report to represent the offenses that were detected, investigated, or prosecuted and the police report describes a simple assault. *See* N.J. Stat. Ann. § 2C:12-1.a.

When determining what activities law enforcement detected, investigated, or prosecuted, we consider any credible evidence relevant to the petition. *See* section 214(p)(4) of the Act. However, even though a petitioner may submit any credible evidence relating to their U petition for consideration, the burden remains with petitioners to demonstrate eligibility for U-1 nonimmigrant status. 8 C.F.R. § 214.14(c)(4). USCIS will determine, in its sole discretion, the evidentiary value of all of the evidence within the record. *Id.* Here, the evidence we are considering consists of the Supplement B, the police report, and the Petitioner's personal statement. The Supplement B identified robbery as the criminal activity, and the police report described a robbery and a simple assault. The Petitioner's statement adds conduct that does not fully align with the material from law enforcement. While we acknowledge the Petitioner's claims detailed in her personal statement, she has not sufficiently demonstrated that the offenses described in her statement were detected, investigated, or prosecuted by law enforcement. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and she was the victim of, second-degree robbery and the constituent element of simple assault during that robbery.

C. The Crimes Detected, Investigated, or Prosecuted are Not Substantially Similar to a Qualifying Crime

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 such 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).

We begin with the criminal activity the Supplement B and police report reflect were detected, investigated, or prosecuted: second-degree robbery. In New Jersey, a person is guilty of robbery if, in the course of committing a theft, they: (1) inflict bodily injury or use force upon another; or (2) threaten another with or purposely puts them in fear of immediate bodily injury; or (3) commit or threaten immediately to commit any crime of the first or second degree. N.J. Stat. Ann. § 2C:15-1.a. In New Jersey, the offense of simple assault is a constituent element of a second-degree robbery. *State v. Battle*, 507 A.2d 297, 299 (App. Div. 1986). The New Jersey statute defines a simple assault as: (1) an attempt to cause or purposely, knowingly or recklessly cause bodily injury to another; (2) negligently cause bodily injury to another with a deadly weapon; or (3) an attempt by physical menace to put another in fear of imminent serious bodily injury. N.J. Stat. Ann. § 2C:12-1.a. Simple assault in New Jersey is considered a disorderly persons offense meaning it is equal to a misdemeanor in other contexts and is associated with a maximum incarceration time of six months. N.J. Stat. Ann. § 2C:12-1; N.J. Stat. Ann. § 2C:43-8.

The relevant portion of New Jersey law states that aggravated assault is an “[a]ttempt[ed] to cause serious bodily injury to another, or cause[d] such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury.” N.J. Stat. Ann. § 2C:12-1.b. “‘Serious bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” N.J. Stat. Ann. § 2C:11-1. The definition of aggravated assault also includes simple assault with an aggravating factor such as simple assault committed upon law enforcement officials or a person engaged in emergency first aid.

On appeal, the Petitioner argues that during the robbery detected by law enforcement, an aggravated assault was committed against her. The Petitioner provided the definition of robbery under New Jersey law then noted that it included as an element an attempt to cause serious bodily injury to another which is also an element of aggravated assault. She further asserts that New Jersey’s aggravated assault statute does not require that a victim actually suffer serious bodily injury but rather that this element is met as long as it was the perpetrator’s intent to cause serious bodily injury. Accompanying the appeal, the Petitioner provides an opinion letter from an attorney with experience with New Jersey laws, [REDACTED] and the appeal brief describes his letter as “a New Jersey criminal law expert.” [REDACTED] concluded that the perpetrator in the Petitioner’s case attempted to commit an aggravated assault against her because the perpetrator intended to cause serious bodily harm in an attempt to escape law enforcement.

However, as discussed above and as conceded by the Petitioner, 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.” Robbery in the second degree is not substantially similar in its nature and elements to aggravated assault. The nature of a robbery primarily involves a theft and simple assault, but nature of an aggravated assault as claimed here focuses on the attempt or the execution of an injury to another person either resulting in “serious bodily injury” or exercising “extreme indifference to the value of human life” while causing such an injury. The only elements shared between these two offenses is a purposeful or an attempt to inflict serious bodily injury to another person. Also unlike the aggravated assault provisions, robbery does not require any other aggravating circumstance such as assault of specific groups of people such as law enforcement officials or use of a deadly weapon. As discussed above, 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. In summary, the Petitioner has not established that the nature and elements of robbery are substantially similar to an aggravated assault under New Jersey law.

We also note that the Petitioner’s claims relating to false imprisonment and criminal restraint relied on the claimed facts that were only described in her personal statement and she did not make a comparison of the statute for those crimes under New Jersey law to the state’s law for robbery. The record therefore does not demonstrate that false imprisonment or criminal restraint were detected, investigated, or prosecuted nor does the Petitioner explain how the crime of robbery that was detected, investigated, or prosecuted is substantially similar to false imprisonment or criminal restraint. The burden to present and develop the arguments lies with the Petitioner, and they have not done so here. Section 291 of the Act; *Chawathe*, 25 I&N Dec. at 375. As a result, we will not address false imprisonment or criminal restraint under our substantially similar analysis in this decision.

Based on the foregoing, the Petitioner has not established that the robbery offense of which they were a victim is substantially similar to the qualifying crime of felonious assault. Therefore, the Petitioner has not demonstrated that she was a victim of any qualifying crime or “any similar activity” to the qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act.

D. The Remaining Eligibility Criteria for U-1 Classification

The 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 they were the victim of qualifying criminal activity, or an offense that is substantially similar to a qualifying criminal activity, they necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The record shows that the Petitioner was the unfortunate victim of a robbery and a simple assault which is a constituent element of a second-degree robbery, but those offenses are not, do not involve, and are not substantially similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.