



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

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

In Re: 19242021

Date: FEB. 04, 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 he was the victim of a qualifying crime. The matter is now before us on appeal.

On appeal, the Petitioner submits a brief asserting that he was the victim of qualifying criminal activity, that he suffered substantial mental and physical abuse and has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office reviews 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 dismiss the appeal.

## 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.<sup>1</sup> 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 [redacted] 2015 with a Supplement B signed and certified by a detective sergeant of the [redacted] Police Department in [redacted] California (certifying official). The certifying official checked boxes indicating that the Petitioner was a victim of criminal activity involving or similar to "Felonious Assault," "Attempt to commit any of the named crimes," and "Other: Battery" and identified section 242 (battery) of the California Penal Code (Cal. Penal Code) as the statutory citation for the criminal activity being investigated or prosecuted. When asked to provide a description of this criminal activity, the certifying official wrote that while the Petitioner was working, a truck pulled up, two men got out, and the first suspect "head butted [the Petitioner] on the left side of his head, then punched him on the right side of his face" and a second suspect "punched the back of his head." The certifying official indicated that "[i]njuries were not reported." The police report accompanying the Supplement B provided a similar narrative and identified the offense completed as a misdemeanor and a violation of section 242-1 (battery) of the Cal. Penal Code. The Petitioner also provided a statement with his U petition where he provided a narrative similar to that of the Supplement B and the police report.

In May 2020, the Director issued a notice of intent to detain to deny (NOID) in which he advised that the crime investigated as perpetrated against the Petitioner was battery, which is not a qualifying crime, and asked for additional evidence to establish that battery is substantially similar to that of a qualifying crime. In response to the Director's NOID, the Petitioner provided an updated Supplement B certified by a sergeant in the assaults unit of the [redacted] Police Department (second certifying official); this sergeant checked boxes indicating that the Petitioner was a victim of criminal activity involving or similar to "Felonious Assault" and "False Imprisonment," and listing the statutory citations for the criminal activity investigated or prosecuted as sections 245(a)(4) (assault with deadly weapon or force likely to produce great bodily injury; punishment), 236 (false imprisonment), and 242 (battery) of the Cal. Penal Code.<sup>2</sup> The second certifying official, when asked to describe any known or documented

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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.

<sup>2</sup> With this NOID the Director also requested additional evidence to establish that the Petitioner suffered substantial physical or mental abuse as a result of his victimization. The Petitioner offered additional evidence in response to this request as well, including a mental health evaluation, copies of case law, and of non-precedent decisions issued by the AAO.

injuries, stated that the Petitioner “had a bruise on his neck.” Upon review of the evidence, the Director acknowledged that the updated Supplement B listed additional statutory citations as having been investigated or prosecuted as perpetrated against the Petitioner, but noted that the record lacked clarification from the second certifying official as to why these statutory citations were added beyond a brief written by counsel for the Petitioner. The Director denied the U petition on the grounds that the Petitioner had not established he was a victim of a qualifying crime or that he had suffered substantial physical or mental abuse as a result of a qualifying crime.

#### B. The Petitioner is Not a Victim of a Qualifying Crime

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). 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 . . . .”).

With regard to the Petitioner’s assertions that he was a victim of the qualifying crimes of felonious assault and of false imprisonment, we acknowledge that in part 3.1 of the updated Supplement B, the certifying official also checked a boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “Attempt to commit any of the named crimes” and “False Imprisonment” in addition to “Felonious Assault.” We also acknowledge that in part 3.3, the certifying official cited to false imprisonment under section 236 of the Cal. Penal Code and to assault with a deadly weapon under section 245(a)(4), a felony-level assault, as specific statutory citations investigated or prosecuted as perpetrated against the Petitioner. However, the updated Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of false imprisonment as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating that the burden “shall be on the petitioner to demonstrate eligibility” and that “USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B”).

As a preliminary matter, the original Supplement B submitted with the Petitioner’s U petition and the remaining evidence in the record do not reference any false imprisonment provision or felony assault provision under California law or otherwise indicate that false imprisonment or felonious assault was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The police report, provided with the original Supplement B, does not reference any false imprisonment or assault as perpetrated against Petitioner, or an attempt to do so. Instead, the report indicates that law enforcement detected and investigated the crime of battery under California law.

Moreover, the updated Supplement B was certified by a different sergeant in the [ ] Police Department five years after the certification of the original Supplement B and almost six years after the incident in question. It is not accompanied by a statement from the second certifying official or any other evidence explaining the reasons behind the additional statutory citation, and describes criminal activity similar to that described on the original Supplement B.

The Petitioner argues on appeal that the facts of the crime are a categorical match to Assault with Intent to Commit Great Bodily Injury, and therefore that the Petitioner was a victim of felonious assault. However, evidence in the record does not indicate that the Petitioner was actually the victim of assault with a deadly weapon or force likely to produce great bodily injury under California law. At the time of the offense against the Petitioner, section 245(a) of the Cal. Pen. Code punished, as a felony, any person who commits “an assault upon the person of another with a deadly weapon or instrument other than a firearm” or “by means of force likely to produce great bodily injury . . .” Cal. Pen. Code § 245(a)(1), (4) (West 2014). Assault is defined in California as “an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another.” Cal. Pen. Code § 240 (West 2014). As used in section 245(a) of the Cal. Pen. Code, a “deadly weapon” is “any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.” *People v. Aguilar*, 945 P.2d 1204, 1207 (Cal. 1997) (internal quotations omitted). “Great bodily injury” means “significant or substantial injury” or “injury that is greater than minor or moderate harm.” Cal. Pen. Code § 12022.7(f) (West 2014); Judicial Counsel of California Criminal Jury Instructions (CALCRIM) No. 875 (2018 edition). The “nature of . . . injuries and their location are relevant facts for consideration in determining whether an object was used in a manner capable of producing and likely to produce great bodily injury.” *People v. Brown*, 147 Cal. Rptr. 3d 848, 851 (2012).

In this case, the evidence of record, including the original and updated Supplement B, police report, and the Petitioner’s personal statement, indicated that the Petitioner was punched by his two assailants. While we do not question the fear and shock the Petitioner describes feeling during, and as a result of, the incident, the evidence does not describe any significant or substantial harm sustained by the Petitioner. The original Supplement B does not indicate that the Petitioner suffered any injuries resulting from the incident being investigated or prosecuted, and the Petitioner does not submit medical records related to the criminal activity. Although we acknowledge that the updated Supplement B indicates that the Petitioner suffered a bruise on his eye, this evidence, in conjunction with the record in its entirety, does not establish that the Petitioner was placed under circumstances likely to produce, or that did in fact produce, the great bodily injury requisite to assault with a deadly weapon or by means of force likely to produce great bodily injury under section 245(a) of the Cal. Pen. Code. Consequently, the Supplement B’s listing of section 245 of the Cal. Pen. Code as having been investigated or prosecuted as perpetrated against the Petitioner on its own is insufficient to establish that the Petitioner was in fact a victim of that offense.

We further acknowledge the Petitioner’s assertion on appeal that the crime of false imprisonment was committed against him because the facts of the criminal activity, as described in his personal statements and the police report, are categorically similar to the criminal statute at section 236 of the Cal. Penal Code defining false imprisonment. However, evidence describing what may appear to be, or 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 law enforcement actually detected,

investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(b)(3) (requiring helpfulness to a certifying agency in the “investigation or prosecution of the qualifying criminal activity” on which the U petition is based). As discussed above, the record does not establish, by a preponderance of the evidence, that the crime detected, investigated, or prosecuted as perpetrated against the Petitioner was that of false imprisonment. 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); *Chawathe*, 25 I&N Dec. 369 at 376. Absent evidence demonstrating that the crime of false imprisonment was perpetrated against the Petitioner, this burden has not been met.

For the foregoing reasons, the Petitioner has not established by a preponderance of the evidence that he was victim of the qualifying crimes of false imprisonment, felonious assault, or an attempt to commit these crimes. Instead, the record reflects by a preponderance of the evidence that the crime detected, investigated, or prosecuted as perpetrated against the Petitioner was that of misdemeanor battery, in violation of section 242 of the Cal. Penal Code.

#### C. The Remaining 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 was the victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I)-(IV) of the Act. The Petitioner argues on appeal that the record evidence establishes that he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. However, as he has not established that he was a victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act.

### III. CONCLUSION

The Petitioner has not demonstrated that, as required, he was a victim of qualifying criminal activity. The Petitioner therefore cannot satisfy the eligibility criteria for U nonimmigrant status in subsections 101(a)(15)(U)(i)(I)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

**ORDER:** The appeal is dismissed.