



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

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

In Re: 20348583

Date: FEB. 4, 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 denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish, as required, that he was the victim of a qualifying criminal activity. On appeal, the Petitioner submits a brief and reasserts eligibility. 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

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.¹ 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 November 2015 with a Supplement B signed and certified by a division commander in the [REDACTED] Kansas Police Department (certifying official). The certifying official checked a box indicating that in [REDACTED] 2013 the Petitioner was the victim of criminal activity involving or similar to “Other:” and inserting “Hit & Run” as the description. Under part 3.3, the official stated “Hit and Run has no State Statue” as the specific crime investigated or prosecuted. In describing the criminal activity investigated or prosecuted, the certifying official stated the following:

Officers were attempting to stop a vehicle for traffic violations, officers initiated their emergency equipment but driver failed to yield. Officers pursued the vehicle and driver jumped out of the vehicle and ran. The car continued to run and moved forward wrecking into the front of the victim[']s home. Car killed victim[']s family dog and severally [*sic*] damaged the front of his house.

The certifying office did not provide a description of any known or documented injury to the victim. The related accident report identifies the criminal activity as hit and run and reiterates the description of the incident that is consistent with the certifying official’s account set forth in the Supplement B.

The Director issued a request for evidence (RFE), providing the Petitioner an opportunity to submit “additional evidence to demonstrate that the crime listed on [the] law enforcement certification would be considered a crime related to those listed in [the U] regulation.” In response to the RFE, the Petitioner provided, among other things, an updated Supplement B checking the box that he was the victim of criminal activity involving or similar to “Felonious Assault.” The certifying official listed section 8-1568(b)(1)(D) of the Kansas Statutes Annotated (Kan. Stat. Ann.), defining the crime of fleeing or attempting to elude a police officer, as the statute investigated or prosecuted as perpetrated against the Petitioner. In describing the criminal activity being investigated and/or prosecuted, the certifying official provided the same information as on the original Supplement B, adding that the Petitioner’s dog “was outside and . . . struck and killed” and the Petitioner was “inside the home when the incident occurred.” The certifying official also indicated “[n]o injuries to the victim.”

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 he was the victim of qualifying criminal activity. In reaching this conclusion, the Director noted that fleeing or attempting to elude a police officer is not one of qualifying crimes listed in the statute or corresponding regulations, and the Petitioner did not establish that fleeing or attempting to elude a police officer under Kansas law is substantially similar to felonious assault or any other qualifying criminal activity listed in the Act and implementing regulations. The Petitioner has not overcome this determination on appeal.

B. The Petitioner Was Not the Victim of Qualifying Criminal Activity

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,² 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 . . .”).

The Petitioner does not contest that fleeing or attempting to elude a police officer is not a qualifying crime for the purposes of U nonimmigrant classification or that the nature and elements of fleeing or attempting to elude a police officer under Kansas law are not substantially similar to felonious assault or any other qualifying crime. He argues, however, that based on the factual circumstances of the offense he was actually the victim of aggravated assault, as defined in section 21-5412 of Kan. Stat. Ann., and that this crime is the Kansas state equivalent to felonious assault as listed in the statute and regulations. He states, through counsel, that aggravated assault under Kansas law occurs when it is committed with a deadly weapon and that, in this case, “the perpetrator engaged in an inherently dangerous act (willfully fleeing from police and causing a serious accident)” and “used a deadly weapon (an unarmed car)” that caused the death of his dog and placed his “family in a situation likely to produce serious bodily injury.” The Petitioner avers that the crime of which he was a victim therefore qualifies as an aggravated assault, the equivalent of the requisite felonious assault. We acknowledge the Petitioner’s assertions but, as explained below, they do not establish his eligibility.

The mere fact that the perpetrator’s actions may appear to be, or could have been hypothetically charged as, qualifying criminal activity is insufficient to establish the 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(a)(5).

² *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).

Here, on the initial Supplement B submitted with the Petitioner's U petition, the certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to only "Hit & Run." On the updated Supplement B submitted in response to the Director's RFE, the certifying official cited to fleeing or attempting to elude a police officer under section 8-1568(b)(1)(D) of the Kan. Stat. Ann. as the specific crime investigated or prosecuted and did not cite to any provisions involving assault or aggravated assault under Kansas law. Furthermore, the remaining narrative portions of both Supplement Bs, as well as the remainder of the evidence in the record, nowhere references assault or aggravated assault under Kansas law or otherwise indicates that these crimes were detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. As stated, the accident report accompanying the Supplement B identified the criminal activity as a hit and run and describes the perpetrator fleeing the scene as his car hit the Petitioner's home. Accordingly, the Petitioner has not met his burden of establishing by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted aggravated assault under Kansas law, the state equivalent to the qualifying crime of felonious assault, or any other qualifying crime as perpetrated against him; rather, the record shows that law enforcement detected, investigated, or prosecuted fleeing or attempting to elude a police officer under section 8-1568(b)(1)(D) of the Kan. Stat. Ann., which is not a qualifying criminal activity or substantially similar to qualifying criminal activity for the purposes of U nonimmigrant classification.

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 not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.