



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

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

In Re: 19640983

Date: FEB. 7, 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 she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief asserting that she was the victim of qualifying criminal activity and has established her eligibility for the benefit sought. 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.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 her U petition with a Supplement B signed and certified by the Assistant District Attorney with the [REDACTED] North Carolina, District Attorney's Office (certifying official), based upon a [REDACTED] 2006 incident whereby gunshots were fired in her home while she was inside. In response to Part 3.1 of the Supplement B, which provides check boxes corresponding to the 28 qualifying crimes listed in section 101(a)(15)(U)(iii) of the Act, the certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Other: Discharge of Deadly Weapon." In response to Part 3.3, which requests the specific statutory citations for the criminal activity investigated or prosecuted as perpetrated against the Petitioner, the certifying official listed "Discharging certain barreled weapons or a firearm into occupied property" under section 14-34.1 of the North Carolina General Statutes Annotated (N.C. Gen. Stat. Ann.). When asked to describe the criminal activity being investigated and any known or documented injuries to the Petitioner, the Supplement B does not provide further details and instead refers to the attached police report. The police report from the [REDACTED] Sheriff's Office submitted with the Petitioner's U petition classified the incident as discharge of weapon in occupied property under section 14-34.1 of the N.C. Gen. Stat. Ann. and does not include additional information about the incident.

The Petitioner's personal statement submitted with her response to the Director's request for evidence provided that she was taking a bath when she heard gunshots, she threw herself onto the ground, and a bullet hit the bathroom door and almost hit her. When she left the bathroom, there were shots in her window and wall, and she saw her grandson, who was almost shot, lying on her bed. Since that day, the Petitioner has nightmares, had a nervous breakdown, and does not sleep well due to fear. The psychological and medical examinations in the record indicate the Petitioner suffers from anxiety, depression, and insomnia, as a result of several factors, to include the [REDACTED] 2006 incident in her home.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity. Specifically, the Director determined that the crime committed against her, discharging certain barreled weapons or a firearm into occupied property under

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.

section 14-34.1 of the N.C. Gen. Stat. Ann., is not a felonious assault and is not substantially similar to felonious assault under North Carolina law.

On appeal, the Petitioner asserts that she was a victim of qualifying criminal activity or, in the alternative, that discharging certain barreled weapons or a firearm into occupied property under North Carolina law is substantially similar to the qualifying crime of felonious assault. She contends that other family members were present during the incident where the weapon was discharged in the house, they have acquired their U nonimmigrant status based on the same incident, and therefore it has been established that the incident constitutes qualifying criminal activity. The Petitioner argues that discharging certain barreled weapons or a firearm into occupied property under North Carolina law is a felony and contains the same elements as the qualifying crime of felonious assault because both provisions include the element of a dangerous weapon causing serious bodily injury.

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). 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 . . .”).

In this case, the Petitioner has not met her burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. At the outset, in regard to the Applicant’s argument that the factual circumstances of the crime demonstrate she was the victim of qualifying criminal activity, 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 the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Petitioners must establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity “in violation of Federal, State, or local criminal law.” Sections 101(a)(15)(U)(i)(III), (iii) of the Act; 8 C.F.R. § 214.14(a)(2), (a)(9), (b)(3). While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. *Id.* Here, the Petitioner has not established that law enforcement actually detected, investigated, or prosecuted a felonious assault as perpetrated against her.

We acknowledge that Part 3.1 of the Supplement B indicates that the Petitioner was the victim of criminal activity involving or similar to the qualifying crime of felonious assault. However, a certifying official's completion of Part 3.1 is not conclusory evidence that a petitioner is or was 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). In this case, Part 3.3 of the Supplement B lists discharging certain barreled weapons or a firearm into occupied property under section 14-34.1 of the N.C. Gen. Stat. Ann. as the statutory citation investigated or prosecuted as perpetrated against the Petitioner. The narrative section of the Supplement B does not reference any sort of felonious assault; instead, it refers specifically to the police report submitted with the U petition. The police report confirms the citation in Part 3.3, classifying the incident as discharge of weapon in occupied property under section 14-34.1 of the N.C. Gen. Stat. Ann. Apart from the checked box discussed above, no evidence in the record, including the Supplement B and police report, cites to or references any felony-level assault provision under North Carolina law as detected, investigated, or prosecuted as perpetrated against the Petitioner.

In these proceedings, the Petitioner bears the burden of establishing eligibility, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Chawathe*, 25 I&N Dec. at 375. Moreover, 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). Considering the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, “discharging certain barreled weapons or a firearm into an occupied property” under North Carolina law, which is not a qualifying crime under the Act.

C. Discharging a Firearm into an Occupied Property under North Carolina law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner asserts that discharging certain barreled weapons or a firearm into occupied property under section 14-34.1 of the N.C. Gen. Stat. Ann. is substantially similar to the qualifying crime of felonious assault. 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. 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).

The Act provides that “any similar activity” to the qualifying crimes may also be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. However, the regulations explicitly define the term “any similar activity” as “offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of qualifying criminal activities.” 8 C.F.R. § 214.14(a)(9); *see also* Interim Rule, 72 Fed. Reg. at 53018 (providing that the definition of “any similar activity” was needed because, and “base[d] . . . on[,] the fact that the statutory list of criminal activity is not composed of specific statutory violations.”).

At time of the incident in question, section 14-34.1 of the N.C. Gen. Stat. Ann. provided, in pertinent part, that:

- (a) Any person who willfully or wantonly discharges or attempts to discharge any firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied is guilty of a Class E felony.
- (b) A person who willfully or wantonly discharges a weapon described in subsection (a) of this section into an occupied dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in operation is guilty of a Class D felony.

N.C. Gen. Stat. Ann. § 14-34.1 (West 2005).

We acknowledge that a violation of section 14-34.1 of the N.C. Gen. Stat. Ann is a felony, and that the provision of law is housed under the chapter of North Carolina law criminalizing various crimes involving assault. Nonetheless, the United States Court of Appeals for the Fourth Circuit has provided that section 14-34.1 of the N.C. Gen. Stat. Ann. “does not require that an offender use, attempt to use, or threaten to use force against another person.” *United States v. Parral-Dominguez*, 794 F.3d 440, 445 (4th Cir. 2015). Rather, the court noted that “[t]he crime is complete when a person (1) intentionally (2) discharges a firearm (3) toward an occupied building (4) when the shooter knows or has reasonable grounds to believe that the building might be occupied.” *Id.* North Carolina courts have likewise determined that no element of assault is necessary to obtain a conviction under the statute. *See, e.g., State v. Messick*, 363 S.E.2d 657, 662 (N.C. 1988) (providing that the offense of discharging a firearm into an occupied building does not involve an assault on a person). North Carolina courts have also determined that the elements of assault with a deadly weapon differ from the elements for discharging a firearm into an occupied dwelling. *See State v. Bland*, 238 S.E.2d 199, 201 (N.C. 1977) (holding “assault with a deadly weapon was not a lesser included offense of discharging a firearm into an occupied building because the latter does not involve an assault on a person”).

Because North Carolina law separately defines assaults punished as a felony and does not require an assault to occur to obtain a conviction for discharging a firearm into an occupied dwelling under section 14-34.1(b) of the N.C. Gen. Stat. Ann., the provision is not equivalent to the qualifying crime

of felonious assault under North Carolina law, nor are its nature and elements substantially similar to those of the qualifying crime of felonious assault under North Carolina law. Therefore, the Petitioner has not demonstrated that she was a victim of the qualifying crime of felonious assault, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act.

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

ORDER: The appeal is dismissed.