



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

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

In Re: 17537853

Date: FEB. 8, 2022

Appeal of Nebraska 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 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 and reasserts his eligibility. 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 his U petition with a Supplement B signed and certified by a captain with the [redacted] Alabama, Police Department (certifying official), based upon a [redacted] 2015 incident whereby he was working at a gas station and a man pointed a gun and yelled at the Petitioner when he asked the man to move his vehicle. 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 “Felony Assault” and “Other: Menacing.” 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 sections 13A-6-20 (assault in the first degree) and 23 (menacing) of the Code of Alabama (Ala. Code). The Supplement B additionally describes the factual basis for the charges, explaining that the Petitioner was working at a gas station when he asked a man to move his vehicle because it was blocking a gas pump. As the Petitioner walked up to the vehicle, the man pulled a gun and pointed it at the Petitioner. The man shouted that he did not have to move his vehicle, cursed at the Petitioner, then drove away. When asked to describe any known or documented injuries to the Petitioner, the Supplement B indicated that the Petitioner suffered substantial mental abuse as the victim of this crime.² The police report from the [redacted] Police Department, submitted with the Petitioner’s U petition, listed the incident type as “Assault” and “Menacing” and provides the same description of the incident as noted in the Supplement B.

The Petitioner’s personal statements submitted with his U petition and with his RFE response stated that he observed a vehicle blocking one of the gas pumps, he asked the driver to move his vehicle, the driver became very irate, and he began to yell profanities at him. The man shouted that he did not have to move his vehicle, pulled a gun out, pointed it directly at the Petitioner, and then drove away. The Petitioner called the police, they arrived a few minutes later, and he was able to give a positive identification of the man who threatened him with the gun. The experience was very terrifying for the Petitioner and it has left a lasting negative impact on him. He constantly has nightmares, has trouble sleeping, and wakes up at night with difficulty breathing and with his heart racing. Before the incident he was carefree and trusting, and now he feels extremely anxious, has trouble trusting people, and fears the perpetrator or his friends will retaliate against him for cooperating with the police. The submitted psychosocial evaluation report discusses the Petitioner’s anxiety and sleep difficulties,

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.

² In response to the Director’s request for evidence (RFE), the Petitioner provided a second Supplement B, signed two months after the first Supplement B, that included the same information as the initial Supplement B.

indicates he is suffering from partial Post Traumatic Stress Disorder as a result of the life-threatening event he endured at gunpoint, and recommends that he pursues counseling.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. Specifically, the Director determined that the crimes committed against him, assault in the first degree and menacing under sections 13A-6-20 and 23 of the Ala. Code, are not substantially similar to Felonious Assault. The Director noted that the elements of Felonious Assault under Alabama law indicate that serious physical injury to another person must occur, and the police report did not list any injuries to the Petitioner or indicate that the weapon pointed at him was discharged.

On appeal, the Petitioner asserts that he was a victim of qualifying criminal activity and that assault in the first degree under Alabama law is substantially similar to the qualifying crime of felonious assault.³ He contends that he feared for his life during the incident, believed death was imminent, suffered substantial mental trauma as a result, and continues to experience those effects. He argues that although Alabama does not have a specific offense of felonious assault within the state criminal code, the crime of assault in the first degree under section 13A-6-20 of the Ala. Code is a felony and has similar elements to those required for the crime of felonious assault as defined in the criminal code of other states that do use that term. He contends that section 13A-6-20 of the Ala. Code has similar elements to the crime of aggravated assault under the Model Penal Code,⁴ which has been adopted by numerous states as an attempt to standardize the penal law of the United States. He further asserts that the Director erred by failing to provide a detailed analysis and by determining that his mental anguish did not qualify as extreme physical injury.

B. Law Enforcement Did 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 Supplement B reflects that the certifying official checked boxes indicating the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault” and “Other:

³ On appeal, the Petitioner does not argue that menacing is a qualifying crime or substantially similar to a qualifying crime.

⁴ Model Penal Code § 211.1(2) (West 2014).

Menacing” and listed sections 13A-6-20 (assault in the first degree) and 23 (menacing) of the Ala. Code as the specific statutory citations for the criminal activity investigated or prosecuted as perpetrated against the Petitioner. The police report also lists the incident type as “Assault” and “Menacing.” Therefore, the evidence reflects that law enforcement detected, investigated, or prosecuted a qualifying crime, assault in the first degree, which is Alabama’s state law equivalent to felonious assault.

C. Criminal Activity of Which the Petitioner Was the Victim

In addition to establishing that law enforcement detected, investigated, or prosecuted a qualifying crime, U petitioners must establish that they were, in fact, victims of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act (requiring substantial physical or mental abuse as a result of having been “a victim of [qualifying] criminal activity”); 8 C.F.R. §§ 214.14(a)(14) (defining “victim of qualifying criminal activity”), (b)(1) (reiterating the requirement of suffering “substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity”), (c)(2)(ii)-(iii) (requiring evidence to establish that “the petitioner is a victim of qualifying criminal activity” and a “signed statement by the petitioner describing the facts of victimization”).

We acknowledge that the certifying official indicated on the Supplement B that law enforcement detected, investigated, or prosecuted the crimes of assault in the first degree and menacing under sections 13A-6-20 and 23 of the Ala. Code. However, the relevant evidence does not indicate that the Petitioner was actually the victim of felonious assault under Alabama law. *See* 8 C.F.R. § 214.14(c)(4) (providing 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 Form I-918, Supplement B”).

Under section 13A-6-20(a) of the Ala. Code, a person commits the crime of assault in the first degree if:

- (1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or
- (2) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of the body of another person, he or she causes such an injury to any person; or
- (3) Under circumstances manifesting extreme indifference to the value of human life, he or she recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or
- (4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree, or any other felony clearly dangerous to human life, or of immediate flight therefrom, he or she causes a serious physical injury to another person; or

(5) While driving under the influence of alcohol or a controlled substance or any combination thereof in violation of Section 32-5A-191 or 32-5A-191.3, he or she causes serious physical injury to the person of another with a vehicle or vessel.

Serious physical injury is defined under section 13A-1-2(14) of the Ala. Code as “[p]hysical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.” Though the Petitioner argues that his mental anguish meets this requirement, the Alabama statute explicitly requires the assault to result in, at least, “*serious physical injury*.” Ala. Code § 13A-6-20(a) (emphasis added). *See also Young v. State*, --- So.3d ---, 2021 WL 3464152, *at 41 (Ala. Crim. App. 2021) (noting that “[e]vidence of a gunshot wound alone is insufficient to prove that the victim had suffered the serious physical injury required for first-degree assault, but a gunshot wound can cause the required serious physical injury”); *Saylor v. State*, 719 So. 2d 266 (Ala. Crim. App. 1998) (determining that a “[v]ictim of knife-assault did not suffer substantial risk of death as would amount to “serious physical injury” required for conviction of first-degree assault; hospital record characterized her injuries as “two stab wounds, skin bleeder, no deep bleeding or hematoma” with “no air escaping,” there was no evidence of internal bleeding or of any damage to veins, arteries, or organs, and she was released in “satisfactory condition” on the next day”). In this case, the police report and the Petitioner’s personal statements do not reflect the Petitioner suffered physical injuries during the incident. Although we do not discount the mental trauma endured by the Petitioner as the result of the incident in question, based on the foregoing, he has not established by a preponderance of the evidence that he was the victim of assault in the first degree, Alabama’s state law equivalent to the qualifying crime of felonious assault.

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

ORDER: The appeal is dismissed.