



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

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

In Re: 18487995

Date: FEB. 11, 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 that she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner asserts that she was the victim of qualifying criminal activity 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 remand the matter to the Director for the issuance of a new decision.

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).

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). 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 in August 2015 with a Supplement B signed and certified by the Deputy Chief of the [redacted] New Mexico Police Department (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." The certifying official also checked a box indicating the Petitioner was the victim of activity involving or similar to "Other: Robbery." The certifying official listed section 9.08.020 (battery) of the [redacted] Municipal Code [redacted] Mun. Code) as the statutory citation for the criminal activity investigated or prosecuted as perpetrated against the Petitioner. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official stated that, "[the Petitioner] was a clerk at [redacted]'s Fashions when two perpetrators assaulted her and shoplifted from the store. [The Petitioner] provided her statement to [redacted] Police Department." The [redacted] Police Department Incident Report (incident report) accompanying the Supplement B identified the offenses committed as "battery" and "shoplifting." The narrative portion of the incident report provided further detail about the incident including that the Petitioner witnessed a 50-year-old woman stealing clothing from a rack in the store. When the woman and her companion exited the store, the Petitioner confronted them in the parking lot. She told them that they needed to stay because she was going to call the police. The Petitioner stated that both individuals yelled at her and the woman grabbed her by her left arm and slapped her on the right side of her cheek. The individuals then got into their vehicle and left the area. The Petitioner submitted a personal statement in which she states that, one afternoon "two people came in and requested to look at shoes. [She] went back to get the sizes, and when [she] came back, they had stuffed some merchandise into their purse." She also "noticed that the mannequin had suddenly lost its [*sic*] clothes, so [she] was immediately suspicious." She stated that she followed the two perpetrators as they exited the store. She told them to stop and that she was going to call the police because they had stolen items from the store. She stated that the female perpetrator suddenly became very aggressive. "[The female perpetrator] hit [the Petitioner's] face, and pulled [her] hair" while the Petitioner's two children watched. The female perpetrator dragged the Petitioner by her hair and arm towards the store. Once the Petitioner was inside the store, the female perpetrator ran to her car and drove away. The Petitioner refused treatment despite suffering a bruise on her cheek and a headache from the hair pulling.

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.

After reviewing the evidence in the record, the Director issued a request for evidence (RFE) for additional evidence that the crime listed on the Petitioner's Supplement B was a crime related to those listed in the statute and implementing regulations. In response, the Petitioner provided, among other things, an updated Supplement B, indicating that she was the victim of criminal activity involving or similar to "False Imprisonment," "Felonious Assault," and "Attempt to Commit Any of the Named Crimes." The certifying official listed sections 30-3-2 (aggravated assault), 30-4-3 (false imprisonment), 30-16-2 (robbery), and 30-28-1 (criminal attempt) of the New Mexico Revised Statutes (N.M. Rev. Stat.) as the statutory citations for the criminal activity investigated or prosecuted as perpetrated against the Petitioner. The certifying official added that, "[when the Petitioner] confronted the [*sic*] one of the shoplifters in the parking lot [,] she punched and dragged [the Petitioner] by her hair towards the building and wouldn't let her call for help." When asked to describe any injuries to the Petitioner, the certifying official also added that, "[the Petitioner] was grabbed by one of the perpetrators, drug around and slapped in the face. [She] had visible bruising to her face and arm." The Petitioner also provided an updated personal statement stating that, the female perpetrator "push[ed her] back towards the building and inside trapping [her] without anyway [*sic*] to escape. She also stated that, "[she] couldn't run because [the perpetrator] had one hand firmly holding [her] hair."

The Director subsequently 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 focused her analysis on the fact that the incident report only listed the non-qualifying crimes of battery and shoplifting as the crimes detected or investigated during the incident. On appeal, the Petitioner contends that law enforcement detected and investigated, and she was the victim of, aggravated assault under section 30-3-2 of the N.M. Stat. Ann., the state equivalent to the qualifying crime of felonious assault. She notes that, in New Mexico, an individual can commit an aggravated assault when he or she "willfully and intentionally assaults another with intent to commit any felony." She argues that she was physically assaulted during a robbery, a felony in New Mexico, thereby satisfying the elements of aggravated assault under New Mexico law. The Petitioner also contends that she was the victim of false imprisonment based on the updated Supplement B and the factual circumstances of the offense.²

B. The Petitioner Was the Victim of a Felonious Assault

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

² As the Petitioner has demonstrated that she was the victim of the qualifying crime of felonious assault, we need not further address her arguments regarding the qualifying crime of false imprisonment.

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 . . .”).

Under New Mexico law, assault is defined, in pertinent part, as “any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery.” N.M. Rev. Stat. § 30-3-1 (West 2022). Aggravated assault, a fourth-degree felony,³ occurs, in pertinent part, when an individual “willfully and intentionally assault[s] another with intent to commit any felony.” N.M. Rev. Stat § 30-3-2 (West 2022). In this case, it is undisputed that, according to the facts as detected by law enforcement, the Petitioner was assaulted. The incident report from the [redacted] Police Department and both Supplements B indicate that the Petitioner was punched and grabbed by her hair. Additionally, the facts, as detected by law enforcement, indicate that the perpetrators assaulted the Petitioner during the course of a robbery. Both the incident report and the Supplements B document the Petitioner reporting to law enforcement that she witnessed the two perpetrators stuff store merchandise into their purse. The certifying official confirmed the Petitioner’s description of the events and cited “Robbery” as one of the criminal activities that they investigated or prosecuted on both Supplement B forms. Robbery, a third degree-felony, is defined as “the theft of anything of value from the person of another or from the immediate control of another, by use or threatened use of force or violence.” N.M. Rev. Stat § 30-16-2 (West 2022). In line with this information, both the initial and updated Supplement Bs checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to felonious assault, and the updated Supplement B additionally cited to aggravated assault under section 30-3-2 of N.M. Rev. Stat. as a specific statutory citation investigated or prosecuted as perpetrated against her. Accordingly, and on the basis of the above, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected or investigated, and she was the victim of, aggravated assault under New Mexico law, the state equivalent to the qualifying crime of felonious assault.

III. CONCLUSION

The Petitioner has overcome the Director's determination below and has demonstrated that she is a victim of qualifying criminal activity. Accordingly, the matter will be remanded to the Director for consideration of whether the Petitioner satisfies the remaining statutory eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of anew decision consistent with the foregoing analysis.

³ New Mexico law states that “[a] crime is a felony if it is so designated by law or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized.” *Id.* at § 30-1-6 (West 2020). Aggravated assault carries such a sentence, as a conviction may result in up to 18 months in prison and a fine of up to \$5,000. *Id.* at § 31-18-15 (West 2022).