



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

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

In Re: 20329353

Date: FEB. 17, 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 the qualifying crime of felonious assault. The Administrative Appeals Office (AAO) 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; *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 her U petition in [ ] 2016 with a Supplement B signed and certified by the Sergeant – Records Division of Police for the [ ] Police Department in [ ] Illinois (certifying official). The certifying official indicated that the Petitioner was the victim of criminal activity involving “Other: Armed Robbery,” and cited to section 5/18-1(a) of chapter 720 of the Illinois Compiled Statutes Annotated (Ill. Comp. Stat. Ann.), “robbery” as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, and the involvement of, or any known or documented injury to the Petitioner, the certifying official indicated: “Per reports: while [the Petitioner] was sleeping in a hotel room, an offender unlawfully gained entry and grabbed her purse. [The Petitioner] woke up and the offender pushed her into a wall and fled the scene” and “Per reports: [the Petitioner] sustained a bruised and swollen elbow.”

The police report accompanying the Supplement B classified the incident as a “Burglary – Unlawful Entry” and indicated that the Petitioner was a “victim” of the offense. The report indicated that the Petitioner suffered “minor” injuries. The police report described the Petitioner being woken up in the middle of the night at her hotel by a man with a flashlight. The man was holding her purse, so the Petitioner attempted to take the purse, however, was pushed into a wall while the man escaped. In her declaration the Petitioner submitted in support of her U petition, she corroborated the Supplement B and police report, but described being “viciously hit many times all over my body and I was pushed towards the closet when I fell to the floor the man kicked me many times.”

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. The Petitioner responded timely and submitted an updated Supplement B, a copy of an updated declaration from the Petitioner, a copy of an updated psychological evaluation, copies of medications of the Petitioner, copies of photos of her injuries, copies of character letters, and copies of tax documents, among other documents. In the updated Supplement B, the certifying official checked the boxed indicating that the Petitioner was the victim of criminal activity involving “Felonious Assault,” but again cited to section 5/18-1-a of Ill. Comp. Stat. Ann. chapter 720. The description of the crime committed, and injuries suffered by the Petitioner, did not change. The updated declaration contained a substantially similar account of the robbery as her first declaration.

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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.

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. On appeal, the Petitioner argues that she was the victim of the qualifying crime of attempted felonious assault based on the factual circumstances of the offense. In the alternative, she argues that robbery under section 5/18-1(a) of chapter 720 of the Ill. Comp. Stat. Ann. is substantially similar to the qualifying crimes of felonious assault. The record does not support these claims.

**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* (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 . . . .”).

On appeal, the Petitioner first contends that the factual circumstances of the crime establish that she was the victim of the qualifying crime of felonious assault. In support of this argument, the Petitioner submitted a letter from an attorney, not representing the Petitioner and whom the Petitioner purports is an expert witness, stating that although the criminal activity was classified as a robbery, it “may also be classified as an aggravated assault pursuant to Chapter 720 Illinois Compiled Statutes Section 5/12-2(a).” This argument is unavailing, however, as 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(a)(5).

We acknowledge that in part 3.1 of the updated Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault.” However, a certifying official’s completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general category of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Part 3.3 requests the specific statutory citations of the crime or crimes that a certifying agency detected, investigated, or prosecuted that resulted in a petitioner’s victimization. Here, the updated Supplement B, when read as a whole and in conjunction

with other relevant evidence in the record, does not establish, by a preponderance of the evidence, that law enforcement actually detected, investigated, or prosecuted the qualifying crimes of attempted felonious assault or conspiracy to commit felonious assault as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating that 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”).

In part 3.3, the certifying official cited to section 5/18-1(a) of chapter 720 of the Ill. Comp. Stat. Ann. (robbery) as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. It does not reference any assault provision under Illinois law or otherwise indicate that an assault was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The police report, which the certifying official referenced in the Supplement B, similarly confirmed the same, nowhere indicating that law enforcement at any time detected, investigated, or prosecuted a felonious assault as perpetrated against her. Instead, the record indicates that law enforcement detected, investigated, and prosecuted as perpetrated against the Petitioner attempted robbery under section 5/18-1(a) of chapter 720 of the Ill. Comp. Stat. Ann. As such, the Petitioner has not established that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her.

#### C. The Criminal Activity Detected, Investigated, or Prosecuted under Illinois Law is Not 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 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 Petitioner contends that she was the victim of qualifying criminal activity because the nature and elements of robbery under section 5/18-1(a) of chapter 720 of the Ill. Comp. Stat. Ann. are substantially similar to those of felonious assault. The Petitioner has not established this contention by a preponderance of the evidence. At the outset, Illinois criminal law has codified a state law equivalent to felonious assault – aggravated assault under section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann – thus, armed robbery under Illinois law cannot be construed the same as, or “equivalent” to, the qualifying crime of felonious assault. Further, a comparison of the nature and elements of robbery under section 5/18-1(a) of chapter 720 of the Ill. Comp. Stat. Ann. and aggravated

assault under section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann. demonstrates that they are not substantially similar as contemplated by 8 C.F.R. § 214.14(a)(9).

Section 5/18-1 of chapter 720 of the Ill. Comp. Stat. Ann. provides that a person commits robbery “when he or she knowingly takes property, except a motor vehicle . . . from the person or presence of another by the use of force or by threatening the imminent use of force.” 720 Ill. Comp. Stat. Ann. § 5/18-1(a) (West 2021). Conversely, aggravated assault under Illinois law occurs when a person commits assault, defined at section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann. as “knowingly engag[ing] in conduct which places another in reasonable apprehension of receiving a battery,” with an aggravating factor related to the location or status of the victim or the use of certain weapons or devices. 720 Ill. Comp. Stat. Ann. § 5/12-1, 2. A battery is committed when a person “knowingly without legal justification by any means . . . causes bodily harm to an individual or . . . makes physical contact of an insulting or provoking nature with an individual.” 720 Ill. Comp. Stat. Ann. § 5/12-3 (West 2020).

Robbery involves the taking of personal property by use of force or threatened use of force; it does not include placing the victim in reasonable apprehension of bodily harm or other insulting or provoking physical contact as an element, as required by aggravated assault. The Appellate Court of Illinois has examined the elements of aggravated assault and held that “[p]roof of a reasonable apprehension of receiving a battery is required for conviction of aggravated assault” and no such element is included within the offense of robbery. *See People v. Robinson*, 68 Ill. App. 3d 687, 691 (Ill. 1979); *see also People v. Evans*, 87 Ill. App. 3d 714, 717 (Ill. 1980) (stating that “[a]ssault is simply not an element of every robbery” because “one can commit a robbery by force without the victim perceiving the threat of force”) (citations omitted).<sup>2</sup>

Considering the foregoing, the nature and elements of robbery under section 5/18-1(a) of chapter 720 of the Ill. Comp. Stat. Ann. are not substantially similar to those of aggravated assault under section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann. Therefore, the Petitioner has not demonstrated that she was a victim of the qualifying crime of attempted 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.

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<sup>2</sup> We note that while the Petitioner cited to a prior AAO decision from March 2015 in her brief, the findings of AAO non-precedent decisions are binding only on the parties in that case and do not create agency guidance or practice. USCIS Policy Memorandum PM-602-0086.1, *Precedent and Non-Precedent Decisions of the Administrative Appeals Office (AAO)* 3 (Nov. 18, 2013), <https://www.uscis.gov/legal-resources/policy-memoranda>.