



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

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

In Re: 20507927

Date: FEB. 18, 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 additional evidence and a brief asserting 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 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

In May 2016, the Petitioner filed the instant U petition. In support of her claim, the Petitioner submitted a Form I-918, Supplement B, U Nonimmigrant Status Certification (Supplement B), as well as her personal statement and an investigative report from the police department. Subsequently, in response to a request for evidence (RFE) issued by the Director, the Petitioner additionally submitted a letter from her attorney, a newly executed but incomplete Supplement B, a copy of the previously submitted investigative report, and an updated personal statement.

The original Supplement B checked a box to indicate that the Petitioner was a victim of criminal activity involving or similar to the qualifying crime of felonious assault, but did not list any statutory citations for the specific offenses investigated or prosecuted as perpetrated against the Petitioner, as requested in Part 3.3 of the form, or otherwise contain any further information regarding the incident. The Supplement B submitted by the Petitioner in response to the RFE again did not identify or indicate a specific crime as being perpetrated against the Petitioner, nor did it identify the certifying official by name despite being signed with an original signature.

The investigative report indicates that the Petitioner was the victim of a robbery and physical assault when her purse was stolen while she waited at a bus stop in 2015. The investigative report indicates that, per the Petitioner's description of the incident when reporting the crime to police, she was sitting at a bus stop in the morning with her purse over her left shoulder when the suspect grabbed her purse and attempted to steal it and run away. The Petitioner held onto her purse and did not want to let go then the suspect punched her on her left and right bicep while attempting to remove her purse. The Petitioner reported that the suspect then "began to drag her on the floor. While on the ground the [Petitioner] could no longer hold onto her purse, due to the suspect[']s force." The report further indicates that the Petitioner did not call the police because her cell phone was in her stolen purse and she rode the bus to the hospital where she was treated for pain to her biceps and left knee. Later that same day the Petitioner went to the police station to report the crime.

After reviewing the evidence in the record, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity. The Director acknowledged that the evidence was sufficient to establish that the Petitioner was the victim of robbery under California law, but concluded that robbery was not a qualifying crime or substantially

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.

similar to felonious assault or any other qualifying crime listed in the statute and implementing regulations. The Director highlighted that, in order for an assault to be classified as a felony under California law, an aggravating factor must be present—such as the use of a deadly weapon or force likely to produce great bodily injury—and that “the injuries received d[id] not rise to the level of great bodily injury.”

On appeal, the Petitioner asserts, through counsel, that the record indicates, and law enforcement documentation corroborates, that she was assaulted during the course of a robbery, a felony offense in California, thereby meeting the definition of felonious assault. The Petitioner additionally asserts that the Director erred in concluding that she did not receive great bodily injury and that, regardless, there is no requirement under California law for there to be evidence of actual great bodily injury for a person to be convicted of felonious assault. She claims that the perpetrator engaged in force that was likely to cause great bodily injury and that, as a result, the record indicates that she was the victim of felonious assault.²

B. Law Enforcement Did Not Detect, Investigate, or Prosecute Felonious Assault or Any Other Qualifying Crime as Perpetrated Against the Petitioner

The Act requires that petitioners “ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful” to law enforcement authorities “investigating or prosecuting [qualifying] criminal activity,” as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The requisite law enforcement certification must state, in pertinent part, that the petitioner “has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting.” 8 C.F.R. § 214.14(c)(2)(i). “Investigation or prosecution” of qualifying criminal activity “refers to 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 . . .”).

As a preliminary matter, it is undisputed that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, a robbery and that, during the course of the robbery, she suffered an assault. We further acknowledge that robbery under California law is punished as a felony. *See* California Penal Code (Cal. Penal Code) § 211 (defining robbery as the “felonious taking of personal property in the possession of another . . . accomplished by means of force or fear”) (West 2022). However, contrary to the Petitioner’s arguments on appeal, this does not establish that law enforcement detected, investigated, or prosecuted, and she was the victim of, the qualifying crime of felonious assault. Instead, the U nonimmigrant statutory and regulatory provisions indicate that, at a

² Counsel further asserts that the Director erred in referencing “applicable Arkansas statutes” at one point in the decision, as the crime committed against the Petitioner occurred in California and was reported to the [REDACTED] California Police Department. We acknowledge this error; however, the decision otherwise references and discusses relevant provisions of California law as the basis for the denial and, accordingly, we view this error as harmless.

minimum, a “felonious assault” must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred, distinct from the commission of a misdemeanor assault during the course of a separate felony. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying “felonious assault” when committed “in violation of Federal, State or local criminal law” as a qualifying criminal activity).

Moreover, the Petitioner has not otherwise met her burden of establishing that law enforcement detected, investigated, or prosecuted felonious assault or any other qualifying crime as perpetrated against her. We acknowledge that the certifying official checked a box on the initial and updated Supplements B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault. However, the Supplements B, when read as a whole and in conjunction with other evidence in the record, do not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating 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 . . . Supplement B”). Neither Supplement B cites to or references any felony-level assault provision under California law as detected, investigated, or prosecuted as perpetrated against the Petitioner; indeed, the Supplements B leave the portion of the form requesting the specific statutory citation for the offense investigated or prosecuted blank. The remaining law enforcement documentation in the record, namely the investigative report, likewise makes no reference to any felony-level assault provision under California law.

The Petitioner is correct to the extent that she points out that, in order to be punished as a felony under California law, that actual infliction of serious bodily injury is not required and a perpetrator may commit an assault while only using force likely to produce the same. Cal. Penal Code § 245(a)(4) (West 2022). However, this does not alter our analysis, as evidence describing what may appear to the Petitioner 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. 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 . . .”). As stated above, there is not sufficient evidence in the record to establish that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault, or any other qualifying crime, as perpetrated against the Petitioner.

Accordingly, the Petitioner has not met her burden of establishing, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. Section 101(a)(15)(U)(i)(III), 214(p)(1), and 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. at 375. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and she was the unfortunate victim of, robbery.³

³ Because the Petitioner does not expressly argue that the nature and elements of robbery are substantially similar to felonious assault or any other qualifying crime under California law, we do not address it here.

III. CONCLUSION

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.