



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

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

In Re: 20506621

Date: FEB. 22, 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 he was the victim of a qualifying crime. The Director further concluded that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. The matter is now before us on appeal. On appeal, the Petitioner submits evidence previously in the record, new evidence, and a brief arguing that he 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).

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).

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 that the petitioner

possesses information concerning the qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of it.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. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Evidence and Procedural History

The Petitioner filed his U petition in December 2015. In the underlying record, the Petitioner submitted a Supplement B, which was certified in August 2015 by a deputy chief in the [redacted] Police Department in [redacted] Tennessee. In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the deputy chief checked the boxes for “Felony Assault[,]” and “Other: Aggravated Robbery.” According to Part 3.2, the date of the criminal act was September 28, 2013. In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the deputy chief cited section 39-13-101 of the Tennessee Code Annotated (Tenn. Code Ann.), corresponding to the crime of “assault,” and section 39-13-402 of the Tenn. Code Ann., corresponding to the crime of “aggravated robbery.” In Parts 3.5 and 3.6, which request a description of the criminal activity being investigated or prosecuted and any documented injuries, respectively, the deputy chief stated that:

[Petitioner] was pulling the car into his driveway at his home . . . in [redacted] when someone pulled up to his driveway, got out of a car and placed a semi-automatic handgun to [his] head and demanded everything that he had on him. [Petitioner] was scared for his life and complied with the suspect’s request [Petitioner] has suffered serious mental distress as a result of this incident. He lives with anxiety that an attack like this will happen again.

The [redacted] Police Department incident report identified the incident type as “120 Robbery/Individual.” Under weapon type, the incident report stated “black semi-automatic handgun.” In the narrative, the incident report stated the officers “responded to a Robbery/Individual” and “contacted Felony Response.”²

The Director denied the U petition in July 2021, finding that the Petitioner was not a victim of a qualifying criminal activity as the record evidenced that the crime investigated or prosecuted was

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 a request for evidence (RFE) from the Director explaining that there was insufficient evidence in the record to establish that the individual who signed the Supplement B submitted at filing met the definition of certifying official at 8 C.F.R. § 214.14(a)(3), the Petitioner submitted an additional Supplement B from the [redacted] Police Department. The updated Supplement B contained the same information as that submitted at filing.

robbery, which is not an enumerated crime or substantially similar to an enumerated crime under section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9). Additionally, the Director concluded that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity.

B. Qualifying Criminal Activity

Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act require 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. 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 argues, through counsel, that our analysis of whether law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault was incorrect based on the evidence in the record at the time of the decision. He asserts that the Director’s decision did not reflect consideration of whether he met his burden of submitting sufficient evidence to establish that law enforcement detected, investigated, or prosecuted, and he was the victim of, aggravated assault under section 39-13-102 of the Tenn. Code Ann., because aggravated assault is a lesser-included offense of aggravated robbery under section 39-13-402 of the Tenn. Code Ann.

In this case, the Supplement B submitted with the Petitioner’s U petition checked the box indicating that he was the victim of criminal activity involving or similar to the qualifying crime of felonious assault and listed statutory citations to assault and aggravated robbery under sections 39-13-101 and 39-13-402 of the Tenn. Code Ann. The narrative portion of the Supplement B further provided, as detected by law enforcement, that the Petitioner was robbed at gunpoint when the perpetrator of the crime placed a semi-automatic handgun against his head and demanded everything that he had in his possession. At the time of the offense against the Petitioner, assault as defined under section 39-13-101 of the Tenn. Code Ann. required “intentionally or knowingly caus[ing] another to reasonably fear imminent bodily injury.” Tenn. Code Ann. § 39-13-101 (West 2013). Aggravated assault is committed when a person, in pertinent part, “[i]ntentionally and knowingly commits an assault . . . and the assault . . . [i]nvolved the use or display of a deadly weapon . . .” *Id.* at § 39-13-102 (West 2013). Robbery under section 39-13-401 of the Tenn. Code Ann. is “the intentional or knowing theft of property . . . by force or putting the person in fear.” Tenn. Code Ann. § 39-13-401 (West 2013). Aggravated robbery at section 39-13-402 of the Tenn. Code Ann. is committed when a robbery is “accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon.” Tenn. Code Ann. § 39-13-402 (West 2013). As argued by the Petitioner on appeal, aggravated assault under section 39-13-102 of the Tenn. Stat. Ann.,

the state equivalent to the qualifying crime of felonious assault, has been held to be a lesser-included offense of aggravated robbery under section 39-13-402 of the Tenn. Code. Ann. *See e.g., State v. Franklin*, 130 S.W.3d 789, 798 (Tenn. Crim. App. 2003), *State v. Swift*, 308 S.W.3d 827, 832 (Tenn. 2010). Accordingly, and on the basis of the above, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected or investigated the Tennessee state equivalent to the qualifying crime of felonious assault, as perpetrated against the Petitioner. The Director's determination to the contrary is withdrawn.

C. Substantial Physical and Mental Abuse Suffered as the Result of Qualifying Criminal Activity

The Act and regulations provide that a petitioner is eligible for U-1 nonimmigrant status if he demonstrates, *inter alia*, that he has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. § 214.14(b)(1). The regulations provide that the determination of whether a petitioner has suffered substantial abuse is based on a number of factors, including but not limited to:

The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

8 C.F.R. § 214.14(b)(1). As discussed above, the Director determined that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of the certified criminal activity. On appeal, the Petitioner submits new evidence which includes a 13-page affidavit from a licensed clinical social worker, who provides her diagnoses of the Petitioner's mental health following an "in-depth psychosocial assessment" based on her observations and impressions of the Petitioner over the course of an evaluation. Because the Petitioner has submitted sufficient evidence to establish that law enforcement detected or investigated and he was the victim of qualifying criminal activity, and because this evidence is material to the Director's determination regarding substantial physical or mental abuse, we will remand for the Director's review of this evidence in the first instance.

III. CONCLUSION

The Petitioner has established that law enforcement detected, investigated, or prosecuted, and he was the victim of, a qualifying crime. The Petitioner further submits new evidence material to whether he suffered substantial physical or mental abuse as a result of the same. Accordingly, we will remand the matter for the Director to redetermine whether the Petitioner has met his burden of establishing that he suffered substantial physical or mental abuse as a result of having been the victim of a qualifying crime and has otherwise established eligibility for U nonimmigrant status.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for the entry of new decision consistent with the foregoing analysis which, if adverse to the Petitioner, shall be certified to us for review.