



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

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

In Re: 20083420

Date: FEB. 25, 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), and subsequent motion to reopen and motion to reconsider, concluding that the Petitioner did not establish that she was the victim of qualifying criminal activity. The matter is now before us on appeal. On appeal, the Petitioner submits a statement and reasserts her 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 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, 375 (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). The “spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age,” are also considered victims of qualifying criminal activity “where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity.” 8 C.F.R. § 214.14(a)(14)(i).

“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 October 2015 with a Supplement B signed and certified by a Sergeant of the [REDACTED] Police Department in [REDACTED] California (certifying official). On part 3.1 of the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to the qualifying crimes of “Abusive Sexual Contact” and “Sexual Assault,” and additionally provided the following in the “Other” field: “9 year-old Child.” The certifying official did not complete Part 3.3, where asked to list the specific statutory citations investigated or prosecuted as perpetrated against the Petitioner. Where asked to provide a description of the criminal activity being investigated or prosecuted, and any known injury to the victim, the certifying official indicated that “[the Petitioner’s] U.S. citizen daughter, [B-B-],² was sexually assaulted at age 9 by a roommate in the family home, [V-J-]” and that the victim suffered “severe emotional distress.” Where asked to describe the Petitioner’s helpfulness to law enforcement, the certifying official indicated that the Petitioner “gave statement to police and made her daughter available for interview. She took her daughter to [L-] Medical Clinic for physical examination.” In the “Remarks” block on the front of the form, the certifying official stated that “information was investigated[,] however[,] the detective was unable to determine probable cause to arrest. Case is closed.”

A [REDACTED] Police Department Incident/Investigation Report (incident report) submitted with the Supplement B provided that the Petitioner’s child disclosed to the Petitioner that she had been inappropriately touched within the previous month and lists the charge of “Lewd or Lascivious Acts w/ Child under 14 Years” under section 288(a) of the California Penal Code (Cal. Penal Code). The incident report includes a narrative where the officer outlines the Petitioner’s statements and her child’s statements, as well as an additional interview of the Petitioner’s child with a Forensic Interview Specialist. There is also a narrative outlining the interview of the alleged perpetrator where the officer

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 Initials are used to protect the identities of the individuals.

discusses the allegations against him and he denies them. The incident report concludes, “at this time, I have no corroborating evidence to support [B-B-’s] allegations of being sexually assaulted by [V- J-]. Disposition: Case closed. Lack of evidence at this time.”

In response to the Director’s request for evidence (RFE), the Petitioner submitted a letter from Sergeant H- of the [REDACTED] Police Department, Special Services Division, dated June 2020. In this letter, Sergeant H- stated the following, in relevant part:

Applicant is victim’s mother. Applicant did allow victim to participate in a forensic interview. Victim described touching . . . and although actions were inappropriate, it was unclear what crime occurred Other than the victim’s statement, detective did not have enough to develop probable cause to arrest offender; he did not make any admissions when interviewed by detectives.

On motion to reopen the Director’s decision, the Petitioner submitted a letter from Sergeant Y- of the [REDACTED] Police Department, Special Services Division, dated January 2021. In this letter, Sergeant Y- specifically stated that “no arrest was ever made for a lack of probable cause” and that “[s]exual assault is a qualifying crime.” Sergeant Y- also completed a second Supplement B, dated January 2021, again indicating that the Petitioner was the victim of “Abusive Sexual Contact” and “Sexual Assault” and including the same responses to the questions outlined above. The 2021 Supplement B further listed, at Part 3.3, section 288(a) of the Cal. Penal Code (Lewd or Lascivious Acts w/ Child under 14 Years) as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner.

The Director denied the U petition, concluding that the Petitioner did not establish that she was the victim of qualifying criminal activity. The Director noted that “[a]lthough an incident was reported and investigated, law enforcement did not conclude a crime occurred” and quoted Sergeant H-’s letter stating, “it was unclear what crime occurred;” the conclusions at the end of the incident report stating, “at this time, I have no corroborating evidence to support [B-B-’s] allegations of being sexually assaulted by [V-J-];” and the remarks found on the initial Supplement B stating, “information was investigated however[,] the detective was unable to determine probable cause to arrest. Case is closed.” In dismissing the Petitioner’s motion to reopen and motion to reconsider, the Director reached the same conclusion and noted that while law enforcement diligently evaluated whether a crime occurred in relation to the Petitioner’s complaint, they “were unable to find a crime occurred and were unable to arrest and charge anyone with a violation of any sort of crime. The facts of the record do not indicate a crime occurred. This case was closed without arrest, charges, or prosecution.”

B. Qualifying Criminal Activity

On appeal, the Petitioner asserts that she was the victim of the qualifying crimes of “abusive sexual contact” and “sexual assault” as the mother of her minor child, as contemplated by 8 C.F.R. § 214.14(a)(14)(i).³ In a brief submitted with her motion to reopen and motion to reconsider before

³ The Director’s decision did not dispute that the Petitioner’s mother satisfied the requirements of 8 C.F.R. § 214.14(a)(14)(i), in that her child was nine years of age at the time of the incident and is presumed to have been

the Director, she contended, through counsel, that the “fact that the police found insufficient evidence to make an arrest does not justify a finding that no criminal activity meeting the language of INA § 101(a)(15)(U) has been met.” She further asserted that “under the current law, a conviction or even prosecution of the offender are not necessary to obtain a certification Instead, the applicant must only demonstrate that they possess information concerning the criminal activity enumerated in the statute, and that they are being, ha[ve] been or [are] likely to be helpful to [law enforcement] in the detection, *investigation*, prosecution, conviction or sentencing of the criminal activity” (emphasis in original). The Petitioner added that the Supplement B certified by law enforcement demonstrates that an investigation did in fact occur although the case was subsequently closed due to the investigator’s inability to determine probable cause. She further asserted that “the fact that an investigation was conducted by law enforcement authorities is sufficient to satisfy the certification requirement[s].” The Petitioner reiterates these arguments on appeal.

As stated by the Petitioner, the Act requires that the petitioner “has been helpful, is being helpful, or is 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. “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 . . .”).

Here, the Director’s decision reflects consideration of only the outcome of the investigation completed by law enforcement, rather than the actual investigation itself. The record here provides sufficient evidence to establish that law enforcement investigated qualifying criminal activity committed against the Petitioner as contemplated by 8 C.F.R. § 214.14(a)(5), (a)(9). Namely, the record contains an incident report from the date of the reporting of the incident, which documents law enforcement interviewing the Petitioner and her child regarding the allegations of sexual abuse and lists the specific offense investigated as lewd and lascivious acts against a child under section 288(a) of the Cal. Penal Code. Moreover, the record includes information obtained through law enforcement interviews, as well as two Supplements B from law enforcement certifying the Petitioner as a victim of criminal activity involving or similar to the qualifying crimes of abusive sexual contact and sexual assault, one of which expressly cites to section 288(a) of the Cal. Penal Code as the specific statute investigated or

incompetent or incapacitated as contemplated by the relevant regulations. *See* 8 C.F.R. § 214.14(a)(14)(i) (stating that, “[f]or purposes of determining eligibility under this definition, USCIS considers the age of the victim at the time the qualifying criminal activity occurred”) and 8 C.F.R. § 214.14(b)(2), (3) (stating that, in the event that the direct victim “has not reached 16 years of age on the date of which an act constituting an element of the qualifying criminal activity first occurred,” a parent, guardian, or next friend may possess the information regarding the qualifying criminal activity and provide the required assistance to law enforcement).

prosecuted as perpetrated against the Petitioner. Finally, the record includes letters from Sergeants H- and Y- of the [] Police Department speaking to the specifics and scope of the investigation. The letter from Sergeant Y- expressly states that “[s]exual assault is a qualifying crime” and that he affirmed the Petitioner’s victimization through his certification of a Supplement B on that basis. We acknowledge, as highlighted by the Director, that Sergeant H- stated that law enforcement could not determine what crime occurred; he did not, however, state that *no* crime occurred. Instead, he explained that law enforcement was unable to make an arrest due to lack of corroborating evidence after an investigation, particularly where the alleged perpetrator did not admit to the crime, as stated by police. Sergeant H-’s statement is not sufficient, on its own, to negate the investigation of the crime to which law enforcement certified the Petitioner was a victim.

In this case, and based on the evidence in the record, the Petitioner has met her burden of establishing, by a preponderance of the evidence, that law enforcement investigated lewd and lascivious acts against a child under section 288(a) of the Cal. Penal Code, a state equivalent of the qualifying crime of sexual assault, as perpetrated against her. As such, we will remand the matter to the Director for the issuance of a new decision and consideration of whether the Petitioner has otherwise satisfied her eligibility for U nonimmigrant status, including whether she has been helpful, is being helpful, or is likely to be helpful to law enforcement in this case.

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