



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

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

In Re: 19902279

Date: FEB. 28, 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 Petitioner filed a motion to reopen and a motion to reconsider which the Director dismissed. The matter is now before us on appeal. We review the questions in this matter de novo. See Matter of *Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand 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. Factual and Procedural History

The Petitioner filed her U petition in November 2014 and, as initial evidence, submitted a Supplement B certified in June 2014 by the Senior Deputy Prosecuting Attorney and Chair of the Domestic Violence Unit in the [redacted] Prosecutor's Office in [redacted] Washington (certifying official). 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 certifying official checked the box for "Felonious Assault." According to Part 3.2, the date of the criminal act was [redacted] 2008. In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying official cited Washington Revised Code Annotated (Wash. Rev. Code Ann.) section 9A.36.021, which corresponds to "Assault in the second degree." Wash Rev. Code Ann. § 9A.36.021 (West 2008). In Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, the certifying official stated:

[M-G-]² entered [the Petitioner's] home with a knife and proceeded to her sister's bedroom where he stabbed her sister's boyfriend. [The Petitioner] saw the assailant [M-G-] walking down her hallway, and called out to him; he paused, then left the house. [The Petitioner] was awaken[ed] by screaming and came out of her bedroom to investigate.

Accompanying the Supplement B was a portion of the Petitioner's interview transcript taken by the prosecutor's office in April 2011. In the interview, the Petitioner acknowledged living with her sister at the time of the crime. She described being woken up by her daughter's screams and saw M-G- walking in the hallway. She said M-G- had lived with her sister in the past but, when prompted with the statement that M-G- "never lived in the same place with [her and her sister,]" she responded "no." She said she saw M-G-'s back, spoke to him, and saw him leave.

In response to the Director's request for evidence (RFE), the Petitioner provided a second Supplement B by the same certifying official, dated August 2018. In response to Part 3.1 of the Supplement B, the certifying official checked the boxes for "Felonious Assault" and "Domestic Violence." In response to Part 3.3, the certifying official again cited Wash. Rev. Code Ann. section 9A.36.021 and added Wash. Rev. Code Ann. sections 9A.36.041, which corresponds to "Assault in the fourth degree," and 10.99.020, which provides "Definitions" for the chapter on domestic violence. Wash Rev. Code Ann. §§ 9A.36.041, 10.99.020 (West 2008). In describing the criminal activity, the certifying official

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.

included the same details and added that M-G- was “a prior roommate.” The Director denied the U petition stating, in relevant part, that the Petitioner did not establish that she was the direct victim of the cited criminal activity. The Director explained that according to the record, M-G- never resided with the Petitioner and did not commit an act of violence against her.

On motion, the Petitioner provided a third Supplement B dated April 2019 by the same certifying official, which contained typed and handwritten content. The certifying official, under Part 3.3, included Wash. Rev. Code Ann. sections 9A.52.020, corresponding to “Burglary in the first degree,” and hand wrote in Wash. Rev. Code Ann. section 9A.36.011, corresponding to “Assault in the first degree,” and 26.50.010, which provides “Definitions” for the chapter on domestic violence prevention, as additional criminal activity being investigated or prosecuted. Wash Rev. Code Ann. §§ 9A.52.020, 9A.36.011, and 26.50.010 (West 2008). Under Part 4, the certifying official described the helpfulness of the Petitioner, stating the Petitioner testified for the prosecution during a jury trial. The certifying official hand wrote an additional sentence stating M-G- “was convicted on all counts and deadly weapon enhancements.” When describing the criminal activity, the certifying official stated the Petitioner was a victim of:

[b]urglary first degree . . . when defendant [M-G-] committed domestic violence by illegally entering their home armed with a knife and therein committed assault in the first degree . . . assault in the second degree . . . and violation of no contact order domestic violence

Submitted with the third Supplement B was an April 2019 letter by the certifying official explaining the previous Supplement Bs were underinclusive of the crimes investigated or prosecuted based on the actual convictions in the case. According to the certifying official, M-G- was convicted at trial of, “Burglary in the First Degree,” “Assault in the first degree,” “Assault in the second degree domestic violence,” and “violation of a no contact order domestic violence.” The certifying official added that the convictions were affirmed by the Washington Court of Appeals, and a copy of the decision was submitted with the motions.³ According to the certifying official, the Petitioner “is a direct victim” because she,

was residing at the home of her sister when the defendant committed domestic violence Burglary in the first degree (class A felony) and multiple counts of felonious assault (class A and B felonies) by illegal entry of the home without permission and violation of a criminal domestic violence no contact order

In dismissing the motions to reopen and to reconsider, the Director stated, in relevant part, the evidence presented was insufficient to establish that the [redacted] Prosecutor’s Office ever identified the Petitioner as being a victim of any of the crimes identified in the Supplement Bs. On appeal, the Petitioner states she has established she was a “direct victim of DV-Burglary” and an “indirect or bystander victim of felony DV assault.”

³ The Washington Court of Appeals decision provided detail on M-G-’s relationship with the Petitioner’s sister, including that they lived together from 2000 to 2006 and M-G- made several attempts to reconcile the relationship from 2006 to 2008.

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 . . .”).

At the time of the offense, the qualifying crime of domestic violence, as defined under Washington law, included, but was not limited to, the below crimes “when committed by one family or household member against another:”

(a) Assault in the first degree . . . (b) Assault in the second degree (d) Assault in the fourth degree (h) Burglary in the first degree (r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence

Wash Rev. Code Ann. § 10.99.020(5). Pursuant to the definitions, “family or household members” include “adult persons who are presently residing together or who have resided together in the past.” Wash Rev. Code Ann. § 10.99.020(3). “Victim” means a family or household member who has been subjected to domestic violence. Wash Rev. Code Ann. § 10.99.020(8). A person was guilty of burglary in the first degree if:

with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

Wash Rev. Code Ann. § 9A.52.020(1).

The record establishes that M-G- was found guilty of burglary in the first degree. The certifying official, in his letter dated April 2019, described that law enforcement was aware that the Petitioner was living in the home of her sister when the burglary occurred. Moreover, in describing the crime in the 2019 Supplement B, the certifying official stated the Petitioner was the victim of burglary in the first degree when M-G- entered her home armed with a knife and committed an assault. For these reasons we conclude that the record contains sufficient evidence to establish by a preponderance of the evidence that law enforcement, detected and investigated the crime of burglary as perpetrated

against the Petitioner. At issue is whether law enforcement detected or investigated domestic violence burglary as perpetrated against the Petitioner, i.e., whether law enforcement detected that the Petitioner and M-G- were family or household members, a necessary element to establishing that domestic violence burglary was perpetrated against her. While we note the Petitioner attested that she did not reside with M-G- in her witness testimony, we also note that according to the submissions below, law enforcement was aware of M-G-'s and Petitioner's sister living together on and off for several years and that the Petitioner and her sister lived together for an amount of time. In addition, the 2018 Supplement B referenced the Petitioner and M-G- as being former roommates. While the certifying official's 2019 letter does not speak to whether law enforcement detected that the Petitioner ever lived with M-G-, he expressly provides that "she is a direct victim" of domestic violence burglary. Moreover, and in line with the 2019 letter, the 2019 Supplement B checks the box that the Petitioner is the victim of criminal activity involving or similar to the qualifying crime of domestic violence and cites to Washington state law corresponding to burglary and domestic violence as the specific statutes investigated or prosecuted as perpetrated against her.

Accordingly, and on the basis of the above, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that law enforcement detected domestic violence burglary under Wash Rev. Code Ann. § 10.99.020(5)(h) as perpetrated against her.⁴ We withdraw the Director's prior decision to the contrary.

U petitioners must also establish that they were, in fact, victims of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act (requiring substantial physical or mental abuse as a result of having been "a victim of [qualifying] criminal activity"); 8 C.F.R. §§ 214.14(a)(14) (defining "victim of qualifying criminal activity"), (b)(1) (reiterating the requirement of suffering "substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity"), (c)(2)(ii)-(iii) (requiring evidence to establish that "the petitioner is a victim of qualifying criminal activity" and a "signed statement by the petitioner describing the facts of victimization"). The record contains, in addition to the Petitioner's witness testimony and testimony at trial, her personal statements describing her living with her sister when M-G- entered their home and assaulted her sister's friend and her witnessing him leaving the home after the crime. On motion, the Petitioner also submitted a statement describing living with M-G-. Letters by family members and a friend also detailed the Petitioner living with M-G- in the past. This evidence is likewise sufficient to establish, by a preponderance of the evidence, that the Petitioner was the victim of domestic violence as defined under Washington State law, a qualifying crime.

⁴ As stated above, the Petitioner also asserts that she was a bystander to the assault and domestic violence charges indicated on the 2019 Supplement B. However, as we have concluded she is a direct victim of domestic violence, we need not reach these additional assertions on appeal.

III. CONCLUSION

The Petitioner has established that law enforcement detected, investigated, or prosecuted, and she was the victim of, a qualifying crime. Accordingly, we will remand the matter for the Director to determine whether the Petitioner has met her burden of establishing the remaining eligibility criteria for U nonimmigrant status.

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