



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

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

In Re: 15759199

Date: JAN. 28, 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 she was the victim of a “qualifying criminal activity,” as required. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). On appeal, the Petitioner claims that the Director’s decision is erroneous, and that she has sufficiently shown the offense committed against her is, or is similar to, the felonious assault qualifying criminal activity listed in the Act and regulations. 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 dismiss the appeal.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish 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.

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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.

Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) from a law enforcement official, certifying the petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and it gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

The petitioner must also provide a statement describing the facts of their victimization, as well as any additional evidence they want USCIS to consider to establish that they are a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although a petitioner may submit any evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. PROCEDURAL HISTORY

The record reflects that in September 2015, the Petitioner filed a U petition and a Supplement B signed and certified by an [redacted] California police department certifying official. The Petitioner also submitted a police report, personal declaration, medical documents, and California Penal Code (Cal. Pen. Code) definition information.

The Director denied the U petition on grounds that the Petitioner did not establish she was the victim of a qualifying criminal activity, which is a preliminary requirement to demonstrating eligibility for U nonimmigrant classification. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(14). The Petitioner asserts on appeal, nevertheless, that she has sufficiently demonstrated she was the victim of qualifying criminal activity, and that she is eligible for U-1 nonimmigrant classification. The Petitioner's "qualifying criminal activity" claim is based on assertions and evidence reflecting that she was the subject of bullying and assaults by a former school mate, and that the assaults (being pushed, bumped, and kicked) caused her fear, and caused physical and medical conditions to worsen.

The Director found that the Petitioner demonstrated, by a preponderance of the evidence, that she was the victim of "battery" under her state's California Penal Code section 242 (which is defined as "any unlawful use of force or violence upon the person of another"). The Director determined, however, that the offense of "battery" is not included in the enumerated list of qualifying crimes set forth at section 101(a)(15)(U)(iii) of the Act. The Director determined next that the Petitioner also did not establish that the California Penal Code section 242 battery offense that she was a victim of, was substantially similar to the felonious assault crime set forth in the enumerated list of criminal activities at section 101(a)(15)(U)(iii) of the Act. The Director pointed out that the elements of the battery offense set forth in California Penal Code section 242, did not include any of the aggravating factors that were required under the California Penal Code section 245 "felonious assault" offense (such as the use of a firearm or other deadly weapon, the use of force likely to produce great bodily injury, or the sustainment of great bodily injury). The Director also noted that the record also contained no indication that law enforcement officials investigated or prosecuted a California Penal Code section

245 felonious assault crime in the Applicant's case. The Director concluded that the Petitioner therefore did not establish she was the victim of qualifying criminal activity, as required.

The issue on appeal is whether the Petitioner has sufficiently shown that she was the victim of qualifying criminal activity - a preliminary requirement to demonstrating eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(a)(14). The Petitioner contends that she has. Upon review of the totality of the record, however, we conclude that the Petitioner has not established her claims.

III. ANALYSIS

A. The Petitioner Did Not Show She Was the Victim of Qualifying Criminal Activity

1. Battery is not a Qualifying Criminal Activity

Again, "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). Here, the Petitioner does not contest the Director's (correct) finding that the offense of "battery" is not included in the enumerated list of qualifying criminal activity set forth in section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9).

2. The Offense Committed Against the Petitioner is Not Substantially Similar to Felonious Assault

Nonetheless, the Petitioner asserts instead that battery under section 242 of the California Penal Code, or, alternatively, the offense committed against her, is substantially similar to the section 101(a)(15)(U)(iii) of the Act 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 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). 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. However, mere overlap with, or commonality 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).

California law defines assault as "an unlawful attempt, coupled with a present ability, to commit a

violent injury on the person of another.” Cal. Penal Code § 240 (West 2020). For an assault to be classified as a felony, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. *See e.g.*, Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2020) (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults).

At the time of the offense against the Petitioner, section 245 of the California Penal Code punished, as a felony, any person who committed “an assault upon the person of another with a deadly weapon or instrument other than a firearm” or “by means of force likely to produce great bodily injury. . . .” Cal. Pen. Code § 245(a)(1), (4) (West 2015). A “deadly weapon” (as used in section 245 of the California Penal Code) was “any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.” *People v. Aguilar*, 945 P.2d 1204, 1207 (Cal. 1997) (internal quotations omitted). “Great bodily injury” meant “significant or substantial injury” or “injury that is greater than minor or moderate harm.” Cal. Pen. Code § 12022.7(f) (West 2015). The “nature of . . . injuries and their location [were] relevant facts for consideration in determining whether an object was used in a manner capable of producing and likely to produce great bodily injury.” *People v. Brown*, 147 Cal. Rptr. 3d 848, 851 (2012).

The elements of the California Penal Code section 242 battery offense did not include any of the aggravating factors (such as the use of a firearm or other deadly weapon, the use of force likely to produce great bodily injury, or the sustainment of great bodily injury) that were required in order for a felony assault to occur under California Penal Code section 245. As such, the Petitioner did not establish that the nature and elements of the California Penal Code section 242 battery offense were substantially similar to the felonious assault crimes set forth in section 245 of the California Penal Code.¹

B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

The Petitioner also contends that we must consider the offense committed against her to be a qualifying criminal activity, because the certifying official checked the Supplement B box indicating that she was the victim of criminal activity involving or similar to felonious assault. However, the regulations clearly reflect 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 Form I-918, Supplement B.” 8 C.F.R. § 214.14(c)(4).

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

¹ The Petitioner suggests that we should consider the fact that the battery offense took place at a school and against a person with a physical disability as aggravating factors for felony assault purposes; however, she provides no legal authority, such as citations to California statutes which indicate these are aggravating factors, to support this claim.

qualifying criminal activity upon which his or her petition is based”) Here, as discussed below, the totality of the evidence in the record reflects that law enforcement authorities only detected, investigated, or prosecuted a California Penal Code section 242 battery offense against the Petitioner.

We acknowledge that in response to Part 3.1 of the Supplement B (which provides check boxes corresponding to the 28 qualifying crimes listed in section 101(a)(15)(U)(iii) of the Act), the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to felonious assault. However, the certifying official also indicated in the same Part 3.1 section (under a box titled “Other”) that the Petitioner was the victim of criminal activity involving or similar to “battery” pursuant to section 242 of the California Penal Code. In addition, although the certifying official left the Part 3.3 Supplement B section which asks for a statutory citation and description of the criminal activity being investigated or prosecuted, blank, the official clearly specified in Part 2 of the Supplement B that their certification related to police report case number [REDACTED]. The corresponding police report from the [REDACTED] Police Department (submitted with the Petitioner’s U petition) identifies the offense committed against the Applicant as a California Penal Code section 242 misdemeanor crime (which again, pertains to a battery offense - defined as “any willful and unlawful use of force or violence upon the person of another.”) Cal. Pen. Code section 242 (West 2015).²

The factual basis for the criminal activity being investigated and/or prosecuted, as described in Parts 3.5 and 3.6 of the Supplement B, also reflects the “battery” based offense. Specifically, these sections of her Supplement B reflect that the Petitioner was the subject of bullying by a former school mate and the bullying and harassment escalated to an assault; that the Petitioner suffered from pre-existing physical conditions which the assault worsened; and that the Petitioner experienced increased back pain due to being shoved and hit with a backpack and having the chair she was sitting in kicked. The relevant police report, as well as the Petitioner’s and her mother’s personal declarations, further recount these incidents at the Petitioner’s school, indicating that on various occasions in or around [REDACTED] 2015, a classmate kicked the Petitioner’s chair, causing her neck to jerk forward painfully, and pushed and bumped into the Petitioner’s back hard with a backpack, resulting in a lot of back pain and causing her to remain home from school the next day. In addition, medical records reflect that the Petitioner had a noticeable pre-existing scoliosis back-related issue, and also reflect that she was also treated for anxiety and major depressive disorders triggered by bullying between 2015-2017. Nevertheless, the descriptions and evidence do not reflect that the offense against the Petitioner which law enforcement detected, investigated, or prosecuted included the use of deadly weapon or means of force likely to produce great bodily harm, or protected class aggravating factors that were required for a felony assault to occur under the California Penal Code. Cal. Pen. Code section 245 (West 2015).

In sum, the record demonstrates that the Petitioner was the victim of a police investigated offense of battery (which California Penal Code section 242 defines as “any unlawful use of force or violence upon the person of another”). It does not, however, reflect that she was the victim of an assault with a deadly weapon or force likely to produce great bodily injury, as required under the California Penal Code section 245 felony assault law. Consequently, the fact that the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to felonious

² We note that the record also contains another police report (case number [REDACTED]) dated in [REDACTED] 2015 and citing to Cal. Pen. Code section 415 (which relates to the misdemeanor/infracton of disturbing the peace with fighting; noise; offensive words). However, this incident is not referred to, or certified by an enforcement agency on the Supplement B.

assault, in response to Part 3.1 of the Supplement B is insufficient to establish that the Petitioner was a victim of that offense, as claimed.

IV. CONCLUSION

The Petitioner has not demonstrated that she was a victim of a qualifying criminal activity, as required. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). She therefore cannot satisfy the eligibility criteria for U nonimmigrant status in subsections 101(a)(15)(U)(i)(I)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

ORDER: The appeal is dismissed.