



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

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

In Re: 22198480

Date: JULY 22, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity 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 qualifying criminal activity. The matter is now before us on appeal. 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. “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, including felonious assault, 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).

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). Although petitioners may submit any relevant, credible evidence

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.

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

The Petitioner filed his U petition in March of 2016. In the personal statement, he explained that on [REDACTED] 2005, he and his family came home from dinner at a family member's house to find that their front door had been broken into and their house "looked like it was flipped upside down." He described contacting the police despite feeling scared to file a report due to their unlawful immigration status. The Petitioner stated that they moved to a different apartment complex, describing it as low-income housing where there is a high volume of violence. He further stated that he continues to live in constant fear, has lived in the United States since he was eight years old, has no family living in Mexico, and would be a target for crime and cartels if he was deported.

In the Supplement B that was submitted with the petition, the certifying official indicated that on [REDACTED] 2007, the Petitioner was a victim of "residential burglary" under 720 Ill. Comp. Stat. Ann. § 5/19-3. The certifying official specified that the Petitioner had no known or documented injury as a result of the crime.

The Director issued a request for evidence (RFE), seeking, among other things, additional documentation establishing that the crime constitutes qualifying criminal activity under the Act and that the Petitioner suffered substantial physical or mental abuse as a result.

The Petitioner responded to the RFE arguing, in part, that burglary² is a qualifying crime under the Act because it is similar to felonious assault under Illinois law. He submitted additional evidence including, but not limited to: copies of the Illinois statutes for burglary, home invasion, assault, aggravated assault, and the Crime Victims Compensation Act; an updated affidavit from the Petitioner; a mental health evaluation diagnosing him with post-traumatic stress disorder; and letters from friends and family.

The Director found that residential burglary is not substantially similar to qualifying crimes found in the regulation and, therefore, concluded the Petitioner did not meet his burden of establishing he was the victim of qualifying criminal activity. The Director denied the U petition accordingly.

On appeal, the Petitioner repeats his argument that burglary is similar to felonious assault, and further argues that burglary is substantially similar to home invasion which is similar to aggravated assault, a felony. According to the Petitioner, aggravated assault, home invasion, and burglary share common elements and all result in a felony sentence of five years or more. He contends that "a group of intruders broke into their home and stole their belongings [and] not only deprived [him] of his property but also of his safety. It was out of mere luck that [he] and his family were not physically harmed by the intruders." The Petitioner resubmits evidence already in the record, as well as new photographs and letters of support from friends and family.

² Although the Supplement B specified the crime as *residential* burglary under 720 Ill. Comp. Stat. Ann. § 5/19-3, in response to the RFE, as well as on appeal, the Petitioner identifies the crime as burglary under 720 Ill. Comp. Stat. Ann. § 5/19-1. Because residential burglary "includes the offense of burglary as defined in Section 19-1," 720 Ill. Comp. Stat. Ann. § 5/19-3, our analysis remains the same under both burglary and residential burglary.

We agree with the Director that the Petitioner has not established he was the victim of qualifying criminal activity. As an initial matter, the Petitioner contends that burglary is *similar* to felonious assault; however, as noted above, the nature and elements of the crime must be *substantially similar* to one of the enumerated crimes listed in section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9). Here, we do not find that the nature and elements of residential burglary under 720 Ill. Comp. Stat. Ann. § 5/19-3, the only crime listed on the Supplement B, are substantially similar to Illinois' felonious assault statute under 720 Ill. Comp. Stat. Ann. § 5/12-2 (aggravated assault), as claimed. At the time the crime occurred in 2007,³ “[a] person commits residential burglary who knowingly and without authority enters or knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft.” 720 Ill. Comp. Stat. Ann. § 5/19-3 (2007). Therefore, the essential elements of residential burglary involve: 1) entering another’s dwelling place without authority, and 2) with the intent to commit a felony or theft therein. However, aggravated assault includes neither of these elements. Rather, the essential element for aggravated assault includes an assault.⁴ The statute contains an extensive list of 18 different scenarios regarding the assault, several of which specify a location, but none including a person’s dwelling place:

A person commits an aggravated assault, when, in committing an assault, he:

- (1) Uses a deadly weapon or any device manufactured and designed to be substantially similar in appearance to a firearm . . . ;
- (2) Is hooded, robed or masked . . . ;
- (3) Knows the individual assaulted to be a teacher or other person employed in any school and such teacher or other employee is upon the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes;
- (4) Knows the individual assaulted to be a supervisor, director, instructor or other person employed in any park district and such supervisor, director, instructor or other employee is upon the grounds of the park or grounds adjacent thereto, or is in any part of a building used for park purposes;
- (5) Knows the individual assaulted to be a caseworker, investigator, or other person employed by the Department of Healthcare and Family Services . . . and such caseworker, investigator, or other person is upon the grounds of a public aid office or grounds adjacent thereto . . . ;
- (6) Knows the individual assaulted to be a peace officer . . . ;
- (7) Knows the individual assaulted to be an emergency medical technician . . . ;
- (8) Knows the individual assaulted to be the driver, operator, employee or passenger of any transportation facility . . . ;
- (9) Or the individual assaulted is on or about a public way, public property, or public place of accommodation or amusement;

³ The Petitioner’s initial statement indicated the crime occurred in 2005, an apparent typographical error considering the entirety of the evidence in the record.

⁴ Under Illinois law, assault is a misdemeanor and is committed when “without lawful authority, [a perpetrator] knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 Ill. Comp. Stat. Ann. § 5/12-1.

(9.5) Is, or the individual assaulted is, in or about a publicly or privately owned sports or entertainment arena, stadium, community or convention hall, special event center, amusement facility, or a special event center in a public park . . .

720 Ill. Comp. Stat. Ann. § 5/12-2 (2007). Therefore, we do not find that the nature and elements of the statutes for residential burglary and aggravated assault are substantially similar.

To the extent the Petitioner argues that burglary is substantially similar to home invasion which is similar to felonious assault, home invasion is not an enumerated, qualifying crime under Section 101(a)(15)(U)(iii) of the Act.⁵ The Act and implementing regulations do not extend to, or include, comparisons with a third offense. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9).⁶

The Petitioner has not established that he was the victim of qualifying criminal activity. He therefore also cannot satisfy the remaining eligibility criteria at section 101 (a)(15)(U)(i) of the Act. The petition will remain denied.

ORDER: The appeal is dismissed.

⁵ A home invasion occurs, in part, when a perpetrator, “without authority . . . knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present or he or she knowingly enters the dwelling place of another and remains in the dwelling place . . .” 720 Ill. Comp. Stat. Ann. § 5/19-6.

⁶ The Petitioner does not assert, and the record does not indicate, that law enforcement detected, investigated, or prosecuted the crime of home invasion. Therefore, we need not evaluate whether home invasion is substantially similar to felonious assault because there is insufficient evidence to demonstrate that law enforcement detected, investigated, or prosecuted a home invasion as perpetrated against the petitioner, as required. Section 101(a)(15)(U)(i)(III) of the Act.