



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

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

In Re: 21964001

Date: JUL. 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), concluding that the Petitioner did not establish that he was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and asserts that the Director’s decision was in error. We review 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 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. 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). “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.

¹ The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of

§ 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 May 2016. In the underlying record, the Petitioner submitted a Supplement B, which was certified in January 2016 by a chief assistant prosecutor at the [redacted] Prosecutor's Office in [redacted] Michigan (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] 2013. In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying official cited to sections 750.529 and 750.227 of the Michigan Compiled Laws Annotated (Mich. Comp. Laws Ann.), which correspond to "Armed robbery," and "Concealed weapons, carrying," respectively. Mich. Comp. Laws Ann. § 750.227, 750.529 (West 2013). In Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, the certifying official stated that the Petitioner, "was assaulted with a weapon in order to rob[] him while outside of his mobile home."

Accompanying the Supplement B was a case report by the [redacted] Sheriff Office in [redacted] Michigan. The case report identified the offense as "Attempted Robbery - Armed" and the weapon as "Handgun (Semi Auto)." According to the narrative portion of the case report, the officers were dispatched for a possible felonious assault, as the Petitioner told the dispatcher that he had a "gun pushed into his stomach," and discovered a "possible attempted armed robbery." The Petitioner was interviewed by officers and stated that he saw a "Jeep" circle the block, with a woman driving and a man in the passenger seat. He said a man got out of the rear of the vehicle and approached him with a gun, ordering the Petitioner to give him "everything he had." The Petitioner responded he did not have anything on his person and when his wife opened the door of their home, the man got back into the vehicle and fled. The report further stated that officers identified and stopped the Jeep and "located a loaded Glock 9mm pistol in the Jeep upon searching it." The Petitioner also submitted a judgment of sentence evidencing that the man who approached him with a gun pled guilty to "armed robbery" and "weapons-felony firearm."

The Director denied the U petition finding that while armed robbery and felonious assault may be similar in some circumstances, the elements of each crime are distinct. The Director further found that the certifying official's indication on the Supplement B that the Petitioner was the victim of felonious assault was without support in the record. On appeal, the Petitioner asserts that he was the victim of armed robbery, which is substantially similar to felonious assault. The Petitioner also claimed that armed robbery contains elements of felonious assault, citing to section 750.82 of the Mich. Comp. Laws Ann., "Felonious assault; violation in a weapon free school zone[,]" was a lesser

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.

included offense to armed robbery, citing to Michigan state law cases, and that felonious assault was investigated as part of the armed robbery investigation.

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 against the Petitioner, the crime of felonious assault was defined as “a person who assaults another person with a gun . . . or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years . . .” Mich. Comp. Laws Ann. § 750.82 (West 2013). Section 750.81 of the Mich. Comp. Laws Ann. corresponds to “Assault and battery; penalties; domestic assault with prior convictions” but does not define assault. Mich. Comp. Laws Ann. § 750.81 (West 2013). At the time of the crime, the corresponding Michigan Model Criminal Jury Instructions (M Crim JI) at 17.1, corresponding to section 750.81 of the Mich. Comp. Laws Ann., provided that to prove a charge of assault (for use where there has been no battery), the prosecutor must prove each of the following elements:

First, that the defendant either attempted to commit a battery on [name complainant] or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful, violent, or offensive touching of the person or something closely connected with the person of another Second, that the defendant intended either to commit a battery upon [name complainant] or to make [name complainant] reasonably fear an immediate battery Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought [he / she] had the ability.

M Crim JI 17.1 (West 2008). Assault is defined in pertinent case law as, “either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery.” *People v. Johnson*, 407 Mich. 196, 210 (1979) (citing *People v. Sanford*, 65 Mich. App. 101, 105 (1975) (defining assault to require, in relevant part, that the victim be put in reasonable fear of immediate harm)).

As the Petitioner argues on appeal, the Supplement B submitted with his U petition checked the box indicating that he was the victim of criminal activity involving or similar to the qualifying crime of felonious assault. Felonious assault under section 750.82 of the Mich. Comp. Laws Ann. is committed when a person, in relevant part, “assaults another person . . . with a gun.” The narrative portion of the Supplement B provided, as detected by law enforcement, that the Petitioner was “assaulted with a weapon in order to rob[] him while outside of his mobile home.” The case report supported that a gun was used and described that the police found a loaded gun in the car after locating the individuals and vehicle involved. The case report also described that one of the individuals involved approached the Petitioner with a gun in hand and the gun was pushed into his stomach. The record therefore establishes that a gun was used in the commission of the crime. Assault, as made clear in the jury instructions and Michigan common law, requires only an “attempt” at committing a battery or “an act that would cause a reasonable person to fear or apprehend an immediate battery.” The jury instructions also look to whether the suspect had the intent to commit a battery or make one reasonably fear an immediate battery and the ability to commit battery. As stated, the details provided in the underlying record establish that an individual approached the Petitioner, holding a gun, and demanding that the Petitioner give him everything he had. The gun, which was later found by the police to be loaded, was pushed into the Petitioner’s stomach. Accordingly, and on the basis of the above, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected felonious assault under section 750.82 of the Mich. Comp. Laws Ann. as perpetrated against him. We withdraw the Director’s decision to the contrary.

III. CONCLUSION

The Director did not analyze whether the Petitioner established that he was, in fact, a victim of the qualifying criminal activity, a necessary element to establish the remaining eligibility requirements for U nonimmigrant status. *See* 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”). Accordingly, we will remand the matter for the Director to determine whether the Petitioner has met his burden of establishing this and 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.