



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

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

In Re: 21467326

Date: JUL. 26, 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). The Petitioner subsequently filed a combined motion to reopen and reconsider, and the Director dismissed the combined motion. The matter is now before us on appeal. On appeal, the Petitioner submits a brief. 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. 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). 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.<sup>1</sup> 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

The Petitioner filed his U petition with a Supplement B signed and certified by the [redacted] (Minnesota) Attorney's Office, based upon an [redacted] 2013 incident whereby he was assaulted. 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 indicated that the Petitioner was the victim of criminal activity involving or similar to felonious assault. In response to Part 3.3, which requests the specific statutory citations for the criminal activity investigated or prosecuted as perpetrated against the Petitioner, the certifying official listed sections 609.223 and 609.224 of the Minnesota Statutes. The Supplement B refers to the attached complaint, which describes the incident. The Petitioner and his friend, S-C-, were playing soccer when a verbal dispute took place.<sup>2</sup> Soon after, another individual, G-B-, approached the Petitioner and S-C- and punched them both, and then fled the scene. The complaint indicates that the Petitioner suffered a bloody nose and a laceration to his right eye. The perpetrator was subsequently charged with one count of assault in the third degree for his assault on S-C-, as S-C- suffered a broken nose, and one count of assault in the fifth degree for his assault on the Petitioner.

The Director denied the U petition in September 2019, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. Specifically, the Director determined that, although the Supplement B was certified with the box checked that the Petitioner was the victim of felonious assault and included the citation for assault in the third degree (Minn. Stat. 609.223) as being investigated as perpetrated against the Petitioner, the evidence and statements submitted only indicated that assault in the fifth degree (Minn. Stat. 609.224) was investigated and prosecuted.

Following the Director's denial of the U petition, the Petitioner filed a combined motion to reopen and reconsider in October 2019. The Director dismissed the combined motion in December 2019, for failing to meet the requirements, as the motion neither provided new evidence, precedent decisions to consider, and did not establish that the decision was incorrect based upon the evidence of the record at the time. The instant appeal was received in January 2020. On this Form I-290B, Notice of Appeal or Motion, the Petitioner indicated that he was filing an appeal of the Director's September 2019 decision on his U petition, which would result in the instant appeal being found to be filed untimely under 8 C.F.R. § 103.3(a)(2), as it was not received within 33 days of the Director's decision. Therefore, we will review the appeal in regard to the Director's December 2020 dismissal of the combined motion.

---

<sup>1</sup> 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.

<sup>2</sup> We use initials to protect the identity of individuals.

The Director dismissed the combined motion, as noted, finding that it failed to meet the requirements of a motion for failing to include either new evidence or pertinent precedent decisions that established that the original decision was in error. With his motion, the Petitioner submitted a legal argument, a full copy of 8 C.F.R. § 214.4, an updated Supplement B, a new personal statement, a different copy of a letter from a retired Minnesota Police Captain, I-d-L-, criminal case information for unrelated charges against the perpetrator, and copies of evidence already contained within the record.

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). We interpret “new facts” to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts does not constitute “new facts.” The new evidence, submitted with the previous motion, did not present new facts to the case. The updated Supplement B, issued by a different agency, the [redacted] (Minnesota) Police Department, only added that there was an “[a]ttempt and/or conspiracy to commit a violation of MN Statutes 609.223 in addition to 609.224,” but fails to provide any additional statement from the new certifying official as to why this section of the Supplement B was changed. The Petitioner’s updated personal statement additionally does not add new facts, but rather restates information that was already contained in his previous statements.

Regarding the letter submitted from I-d-L-, this copy appears to be discussing a different individual’s case, as there are multiple sections of the letter that have had information removed. As such, this letter does not present new facts to the Petitioner’s case. Finally, the criminal information regarding the perpetrator is not informative, as it did not involve the Petitioner.

Finally, the Petitioner’s argument that the Director failed to account for the perpetrator’s “attempt or conspiracy” to commit felonious assault is not supported by the record. The Director’s September 2019 decision on the U petition sufficiently addressed this argument. Rather than identifying an incorrect application of law or USCIS policy in the Director’s decision or submitting precedent decisions or citations to similar governing authority indicating that the decision was based on a violation of USCIS policy, the Petitioner essentially asks us to review the same arguments presented to the Director and come to a different conclusion.

As the Petitioner did not demonstrate that the Director improperly dismissed his combined motion to reopen and reconsider, we will dismiss his appeal.

**ORDER:** The appeal is dismissed.