



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

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

In Re: 11213882

Date: JUL. 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 Vermont 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. On appeal, the Petitioner submits evidence previously in the record, new evidence, and a brief arguing that he has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office reviews 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 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 credible and reliable 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' credible and reliable information regarding, and 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). 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

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in August 2015 with a Supplement B (2015 Supplement B) signed and certified by a sergeant of the Legal Resources Division of the [redacted] Police Department in Tennessee (certifying official). The certifying official checked boxes indicating that, in [redacted] 2015, the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault," and "Other: Robbery," and cited to sections "39-13-401 Robbery" of the Tennessee Code Annotated (Tenn. Code Ann.) as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that "the driver's door opened and the suspect sprayed [the Petitioner and the passenger] in the face with some type of pepper spray. The suspect then took their wallets, cash, phones, and gold chains, before fleeing in an unknown direction. The [Petitioner] refused medical treatment of the irritation caused by the pepper spray." When asked to provide a description of any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner "suffered eye irritation from pepper spray." After the Director issued a request for evidence (RFE), the Petitioner submitted a 2019 Supplement B signed and certified by a different sergeant of the Legal Resource Division of the [redacted] Police (new certifying official). The new certifying official cited the same sections of the Tenn. Code Ann. and the same description of the criminal activity as in the 2015 Supplement B. The new certifying official, however, described the known or documented injury to the Petitioner as "the victim appeared to suffer irritation to his eyes from chemical spray from this incident."

The police report accompanying both the 2015 and 2019 Supplement B included a section entitled "Offense Description," which classified the offense as a "Robbery-Aggravated, Other," and indicated that it was also a "Weapons Law Violation" that was "Completed" in the course of the incident. The narrative section of the report provided that on March 1, 2015, officers responded to:

. . . a call of an aggravated Robbery. Upon arriving at the scene officers made contact with the victims in the parking lot of the business. The victims advised they had just finished dining at the restaurant and had come out to their vehicle parked in the northeast corner of the parking lot. [The Petitioner] advised that he was seated in the driver's seat

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.

and was in the process of removing his hooded sweatshirt when an unknown male approached from the driver's side and sprayed him with OC/chemical spray. He stated while he was disabled by the spray the suspect took his wallet, phone, and gold necklace. Victim 2 advised he was seated in the front passenger seat of the vehicle when the suspect approached from the driver's side and sprayed [the Petitioner] with the OC/chemical spray. Victim 2 stated that one eye was partially effected [sic] by the spray and while his eyes were closed the suspect took his wallet, phone from his hands and gold necklace from his neck.

....

The victims could not provide a possible direction of flight, nor could they state definitively if the suspect was armed with anything other than the chemical spray. . . . Medic 21 responded to the scene to treat the victims for the effects of the chemical spray. The victims refused to be transported [to the hospital].

In support of his U petition, the Petitioner submitted an undated affidavit describing the physical and psychological injuries he suffered as a result of the incident described in the Supplement B and police report. The affidavit stated that, after the Petitioner and his friend finished their meal and got to their car, a stranger opened the driver side door and sprayed the Petitioner and his friend with some kind of chemical. The Petitioner indicated that he feared for his safety because he did not know if the stranger was going to "kill [him], stab [him] or shoot [him]." The affidavit described the stranger taking his wallet, phone, and gold necklace. The Petitioner stated that he was terrified, and his "eyes were burning so bad that [he] could hardly open them." The Petitioner's friend ran to the restaurant asking for help and to call 9-1-1. The Petitioner recounted that the employees of the restaurant ran out to the car and helped them. They gave him a bucket of water to help clean his eyes. The Petitioner explained that after the police came, they asked if he could tell them what happened. However, the Petitioner and his friend were not able to see anything because of the chemical the man used to spray them, which burned their eyes. An ambulance came and offered help, but after washing their eyes with water, he did not believe it was necessary to go to the hospital. The Petitioner stated that a few days later, he knew he had to get psychological help, because his "insomnia and weight loss got worse from the robbery." The Petitioner indicated someone recommended that he go to counseling for help, however, he did not specify who made the recommendation.

The Petitioner also submitted a psychological evaluation, dated June 2015. The evaluation specified that the Petitioner complained of a multitude of psychosocial complications, including, but not limited to: persecutory worries, fearfulness, interpersonal insecurity and distrust, insomnia secondary to worries and thoughts about the incident and being re-victimized, avoidance behaviors, hypervigilance, bothersome recollections that that caused him to feel paranoid, interpersonal distancing, sadness secondary to worries about being physically harmed and unable to provide for his parents, and an exaggerated startle response. In the evaluation, the doctor concluded that "with a reasonable degree of psychological certainty, [the Petitioner] has experienced clinically significant psychological distress as a result of the 2015 assault and robbery. His presentation includes a number of patent Posttraumatic Stress Disorder symptoms, but a diagnosis of Other Specified Trauma- and Stressor Related Disorder appears to be more appropriate. . . . Given his continued distress, it is recommended that he initiate a course of individual therapy to process and resolve the sequelae of the criminal victimization, as well

as develop adaptive strategies to cope with the associated emotional, behavioral and interpersonal difficulties.”

The Director denied the U petition, finding that the Petitioner had not met his burden of establishing that he was the victim of qualifying criminal activity. On appeal, the Petitioner asserts that, based on the factual circumstances of the offense, he was the victim of aggravated robbery under section 39-13-402 of the Tenn. Code Ann., Tennessee’s statutory equivalent to the qualifying crime of felonious assault, and that he suffered substantial physical or mental abuse. In support, the Petitioner resubmits evidence previously in the record, along with a new affidavit, dated March 2020, and letters from two friends.

The March 2020 affidavit is substantially similar to the first affidavit, but contains several inconsistencies with the other evidence in the record. First, the Petitioner indicates that he “still remember[s] as if it happened yesterday” that he and his friend “were robbed while getting into [their] vehicle . . . [and were] brutally pepper sprayed and robbed while [the] mugger had a gun.” The Petitioner states that he “felt like [his] life was about to end.” The Petitioner then explains that he did not seek medical assistance because he did not have insurance and did not have his debit card or anything else because his wallet was stolen. The Petitioner also states that, the following day, he “suffered from [an] allergic reaction [to] the pepper spray [was] not able to breath [and was] fainting.” The Petitioner further states that he “had to go see a local doctor about it” but does “not have any medical reports because it happened in 2015.”

A letter from the Petitioner’s friend, S-P-, states that since the robbery incident, he’s seen the Petitioner very depressed and lost in thoughts with forgetfulness. S-P- states that the Petitioner has disconnected himself from community functions and gatherings and gets nervous and upset when asked about it. S-P- states that he knows how much the Petitioner has suffered and the day after the incident, he saw him and knew he had visited a local doctor regarding his eyes and breathing problems due to the pepper spray. He states that the doctor told the Petitioner that it could have been worse if he’d waited long (before seeing a doctor) because it could have permanently damaged his eyesight.

A letter from the Petitioner’s friend, H-G-, states that since the robbery incident, the Petitioner has been really scared, even scared to go out at night with H-G-. H-G- states that he has asked the Petitioner to get some help, but the Petitioner refuses because he does not want to leave his comfort zone. H-G- states that he has seen how hard this has been on the Petitioner and that the pepper spray damaged his eyes as he couldn’t see clearly for at least two to three days and had a hard time breathing.

B. The Petitioner Was Not the Victim of Qualifying Criminal Activity

As stated above, the Act requires that petitioners “ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful” to law enforcement authorities “investigating or prosecuting [qualifying] criminal activity,” as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. “Investigation or prosecution” of qualifying criminal activity “refers to 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).

In this case, the Director concluded that the Petitioner had not met his burden of establishing that he was the victim of qualifying criminal activity. In reaching this conclusion, the Director noted that, while a chemical spray was used, it does not qualify as a deadly weapon, and while the Petitioner's eyes were irritated by the chemical spray, his injuries do not rise to the level of serious bodily injury, defined as:

Physical injury suffered by the victim of a violent crime that causes a substantial risk of death, extended loss or impairment of a body part or function, or permanent disfigurement: physical injury that is more serious than that ordinarily suffered in battery.

Great Bodily Injury Definition, Merriam-Webster.com Legal Dictionary, <https://www.merriam-webster.com/legal/great%20bodily%20injury> (last visited Jul. 26, 2022). The Director further noted that the injuries suffered by the Petitioner were not substantial, such that he refused medical treatment at the scene and did not seek medical treatment afterward.

A review of the record indicates that in his second affidavit, the Petitioner stated that the robber had a firearm, however, neither the police report, nor the Supplement B, nor his first affidavit mention a firearm. In fact, in his first affidavit, the Petitioner stated that his "eyes were burning so bad that [he] could hardly open them" and that when police asked for details of the robbery, he "explained to them that [he was] not able to see anything because the man sprayed [him] with some chemical that burned [his] eyes." The Petitioner's statements in his first affidavit call into question whether he could have actually seen that the robber had a firearm as he indicated that his eyesight was directly affected. The Petitioner did not explain these changes in his description of the events. Therefore, we agree with the Director in finding that the evidence in the record indicates that the crime committed against the Petitioner does not qualify as aggravated robbery or felonious assault.

1. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crime of Felonious Assault as Perpetrated Against the Petitioner

The Petitioner has also not shown that law enforcement detected, investigated, or prosecuted a qualifying crime committed against him. On appeal, the Petitioner emphasizes that the perpetrator used a "chemical spray" that temporarily blinded him, caused him excruciating pain, and caused him respiratory issues. He further states that he "was lead [*sic*] to believe it to be a deadly weapon." While we do not diminish the fear the Petitioner may have experienced during, and as a result of, the incident, evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence that the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. *See id.*

We acknowledge that, on the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity "involving or similar to" the qualifying crime of

“felonious assault.” However, the Supplement B, when read as a whole and in conjunction with other relevant evidence in the record, does not establish, by a preponderance of the evidence, that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against him. *See* section 214(p)(4) of the Act (stating that, in acting on petitions for U nonimmigrant status, the agency “shall consider any credible evidence relevant to the petition”); 8 C.F.R. § 214.14(c)(4) (stating 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 . . . Supplement B”).

The Supplement B itself indicates that the Petitioner was the victim of criminal activity involving or similar to “Other: . . . Robbery” and, as stated above, cites to robbery under section 39-13-401 of the Tenn. Code Ann. as the statute investigated or prosecuted as perpetrated against him. While the police report classified the offense as a “Robbery-Aggravated, Other,” and indicated that it was also a “Weapons Law Violation” and the certifying official stated that “[r]obbery is a qualifying offense. . . . [and] as a result of the robbery, the [Petitioner] was a victim of [f]elonious [a]ssault, which is a qualifying offense for I-918 U [v]isa certification[.]” the evidence does not indicate that an aggravated robbery was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Instead, the documents indicate that the only offense the certifying agency detected, investigated, and prosecuted as perpetrated against the Petitioner was robbery under section 39-13-401 of the Tenn. Code Ann.

Accordingly, the Petitioner has not demonstrated that he was a victim of any qualifying crime or “any similar activity” to the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

C. The Petitioner Did Not Suffer Substantial Physical and Mental Abuse as a Result of the Qualifying Criminal Activity

In addition, and in conjunction with our analysis above, we further conclude that the Petitioner has not established that he suffered and continues to suffer substantial physical and mental abuse as a result of qualifying criminal activity. The Act and regulations provide that a petitioner is eligible for U-1 nonimmigrant status if he demonstrates, inter alia, that he has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(1) of the Act; 8 C.F.R. § 214.14(b)(1). The regulations provide that the determination of whether a petitioner has suffered substantial abuse is based on a number of factors, including but not limited to:

The nature of the injury inflicted or suffered; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

8 C.F.R. § 214.14(b)(1).

A review of the record indicates that in [redacted] 2015, the Petitioner was pepper sprayed by a robber. However, there are notable inconsistencies regarding the physical injuries suffered and their severity. In his first affidavit, the Petitioner indicated that his eye irritation was resolved after he rinsed them with water, but his second affidavit stated that he sought medical intervention for his eyes the day after the crime. The record does not include evidence of this medical intervention. Further, while the Petitioner's first affidavit suggests that he did not seek emergency services after the incident because rinsing his eyes alleviated the irritation, his second affidavit indicates that he did not request emergency services because he did not have insurance, he knows medical costs are expensive, and he did not have his debit card or anything else because his wallet was stolen. Therefore, we agree with the Director in finding that the evidence in the record indicates that the Petitioner suffered limited physical injury or abuse while the crime was committed.

We further agree with the Director that the evidence in the record does not show significant mental injuries or abuse. While the Petitioner asserts that he suffers from a myriad of psychological complaints, he only saw a doctor one time: before he submitted his U petition. Even though the doctor recommended a course of psychological therapy, the Petitioner has not submitted evidence that he received any therapy, nor has he explained why he has not. The record shows that this incident was a one-time occurrence, of short duration, that did not result in lasting physical effects, impair the Petitioner's ability to function, or cause serious long-term consequences. In addition, both the Supplement Bs and the relevant police report document minor physical harm related to pepper spray irritation, in which the record relates the Petitioner was treated at the site of the crime, but refused transport for additional medical services. We acknowledge that the psychological evaluation, affidavits, and personal statements from friends indicate that the Petitioner suffers from increased nervousness, social anxiety, and sleep issues, however, the record does not show, by a preponderance of the evidence, that the Petitioner is unable to maintain relationships, keep employment, or function normally on a day-to-day basis.

We conclude that the Petitioner has not established that he suffered substantial physical or mental abuse as a result of the criminal activity and specifically cite to the singular nature and duration of the event and the lack of physical and/or emotional abuse. Based on the inconsistencies referenced and the comprehensive analysis found above, the evidence in the record indicates that the Petitioner suffered limited physical injury or abuse while the crime was committed. Further, the Petitioner has not demonstrated that the psychological symptoms he suffered from significantly impaired his ability to function or resulted in "permanent or serious harm to ... [the Petitioner's] mental soundness," as referenced in 8 C.F.R. 214.14(b)(1). While we sympathize with the Petitioner because of the criminal conduct of which he was a victim, in considering the foregoing, the Petitioner has not established that he suffered and continues to suffer substantial physical and mental abuse as a result of the qualifying criminal activity. Section 101(a)(15)(U)(i)(1) of the Act; 8 C.F.R. § 214.14(b)(1).

D. The Remaining Eligibility Criteria for U-1 Classification

U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not met his burden of proof to establish, by a preponderance of the evidence, that he is the victim of qualifying criminal activity or that he suffered and continues to suffer substantial physical and mental abuse as a result of the qualifying criminal activity. The record shows that the Petitioner was the unfortunate victim of a robbery, but this offense is not, does not involve, and is not similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.