



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

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

In Re: 22718349

Date: JUNE 7, 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, in part, that the Petitioner did not establish that he was the victim of qualifying criminal activity or that he suffered substantial physical or mental abuse as a result. The matter is now before us on appeal. Upon *de novo* review, we will remand the matter to the Director to issue 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. “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). 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 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).

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.

II. ANALYSIS

The Petitioner filed his U petition in May of 2016 with a Supplement B certifying that in [REDACTED] 2015, he was the victim of “Felonious Assault,” “Related Crime(s),” and “Other: Robbery.” When asked to provide the specific statutory citations investigated or prosecuted, the Supplement B listed two statutes: aggravated robbery and second-degree assault under Minnesota Statutes Annotated §§ 609.245 and 609.222, respectively. It specified that the Petitioner “was the victim of an aggravated robbery in which one of the suspects used a handgun to facilitate the theft.”

A police report submitted with the U petition listed the offense as aggravated robbery in violation of Minnesota Statutes Annotated § 609.245. It stated that the Petitioner reported lying underneath a van parked in the driveway when a male approached him and yelled at him to get out from under the vehicle. When the Petitioner crawled out, he described seeing a black handgun pointed at him and then a second male approaching him from behind so that he was trapped. The Petitioner reported he was scared for his life and begged them not to hurt him. He stated that as they were taking his wallet and keys, he shined the flashlight he was wearing on his head into one of the perpetrator’s eyes and both perpetrators ran away. The police report noted that the Petitioner said he was not injured and did not need EMS.

The Director issued a Notice of Intent to Deny the petition (NOID), finding that although there was evidence the Petitioner had a mental health evaluation in January of 2016, there was no evidence of physical or mental treatment since the crime occurred in [REDACTED] 2015. The Director further found that although second-degree assault was listed on the Supplement B, the evidence in the record did not show the Petitioner suffered “substantial bodily harm” to support the use of this statute. The Director requested additional evidence to demonstrate the Petitioner was the victim of substantial physical or mental abuse as a result of qualifying criminal activity.

The Petitioner responded to the NOID, arguing, in part, that the Director misread the statute because second-degree assault under Minnesota Statutes Annotated § 609.222, subdivision 1, does not contain an element of substantial bodily harm. He further argued that he suffered emotionally and psychologically as a result of this felonious assault, a qualifying crime under the Act. He submitted additional evidence including, but not limited to: an updated affidavit; a new psychological evaluation; letters from the Petitioner’s stepdaughters and friends; copies of court decisions from the Court of Appeals of Minnesota that analyzed second-degree assault; and jury instructions for second-degree assault.

The Director denied the U petition. The Director quoted the Minnesota statutes for aggravated robbery as well as for assault in the first, second, third, and fifth degrees, concluding that the record did not show the Petitioner “suffered any physical harm in the robbery to even support a charge of MN 609.223, Assault in the Third Degree, much less MN 609.222, Assault in the Second Degree.” The Director further found that aggravated robbery is not among the crimes specifically listed in the regulations and there was insufficient information to show that it is similar to any of the enumerated crimes. Furthermore, the Director found that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of the crime, stating that “the robbery was a single occurrence of short duration that did not require any emergency room care and did not result in any lasting physical effects.” The Director specified that “the petitioner provided a single mental health

evaluation . . . [and that o]ne psychological evaluation in a span of six years does not indicate substantial abuse.”

On appeal, the Petitioner argues, among other things, that second-degree assault under Minnesota Statutes Annotated § 609.222 is indisputably a qualifying crime (felonious assault). He contends that the Director erred in requiring physical harm and that bodily injury, substantial or otherwise, is not an element of second-degree assault under § 609.222, subdivision 1. He further argues that the Director blatantly ignored the evidence he submitted in his response to the NOID, specifying that he submitted ten additional items, including a second psychological evaluation as well as other evidence to show he suffered substantial mental abuse as a result of being a victim of qualifying criminal activity.

After a careful review of the entire record, we agree with the Petitioner that second-degree assault under Minnesota Statutes Annotated § 609.222 is a qualifying crime under the Act. The statute contains two subdivisions and states:

Subdivision 1. Dangerous weapon. Whoever assaults another with a dangerous weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.

Subd. 2. Dangerous weapon; substantial bodily harm. Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Here, the Petitioner argues he was a victim of Subdivision 1, a contention supported by the Supplement B as well as the facts as articulated in the police report.² We agree that the Director erred in requiring “substantial bodily harm” and/or “physical harm” in concluding that the offense was not qualifying criminal activity under the Act as the plain language of Minnesota Statutes Annotated § 609.222, subd. 1 has no such requirement. In addition, second-degree assault is a felony. Minn. Stat. Ann. § 609.02, subd. 2 (defining a felony as “a crime for which a sentence of imprisonment for more than one year may be imposed”). We therefore find that the Petitioner has established he was a victim of felonious assault, a qualifying crime under the Act, and we withdraw the Director’s finding to the contrary.

Because 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, we will remand the matter for the Director to determine whether the Petitioner has met his burden of establishing the remaining eligibility criteria for U nonimmigrant status and for the Director to consider all of the evidence in the record in its entirety, including the evidence the Petitioner submitted in response to the NOID, which the Director failed to consider in concluding that “a single mental health evaluation . . . does not indicate substantial abuse.”

² Under Minnesota law, “[a]ssault” is defined as “an act done with intent to cause fear in another of immediate bodily harm or death” or “the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. Ann. § 609.02 subd. 10.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse to the Petitioner, shall be certified to us for review.