



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

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

In Re: 21402257

Date: MAR. 28, 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). The matter is now before us on appeal. On appeal, the Petitioner asserts his eligibility for U nonimmigrant status and submits a brief and copies of previously submitted evidence. We review the questions in this matter *de novo*. See *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

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and petitioners bear the burden of proof 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)(1), (4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the qualifying criminal

activity.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. The Petitioner Is Not the Victim of Qualifying Criminal Activity

The Petitioner filed his U petition in April 2016 with a Supplement B signed and certified by the Director of Victim Assistance Unit of the [REDACTED] Police Department in [REDACTED] Colorado (certifying official), based on a criminal offense perpetrated against the Petitioner in 2012. 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 checked the boxes indicating that the Petitioner was a victim of activity involving or similar to “felonious assault” and “other: theft from a vehicle.” In part 3.3, the certifying official indicated that sections 18-3-204 and 18-4-203 of the Colorado Revised Statutes Annotated (Colo. Rev. Stat. Ann.) were the statutory citations for the criminal activity investigated or prosecuted, corresponding respectively to third degree assault and second degree burglary. In describing the criminal incident, the Supplement B indicated that the Petitioner was hit in the back of the head after a suspected perpetrator attempted to steal a car and fled the scene.

The [REDACTED] Police Department report of the incident, submitted with the Petitioner’s U petition and describing the criminal activity, is consistent with the account in the Supplement B. The report describes police responding to a vehicle theft and the “complainant” of the crime as the Petitioner’s friend and co-worker who owned an auto service business where the theft took place. The friend told the police that he believed one of the perpetrators had a knife. The report indicated that there were three suspected perpetrators, one of whom hit the Petitioner in the back of the head with his fist. Further, the report stated that the Petitioner verbally confronted the perpetrators as they attempted to drive the vehicle away. According to the report, the Petitioner was not visibly injured, refused medical attention, provided descriptions of the perpetrators to law enforcement, and completed written statements. The report also noted that the Petitioner later expressed unhappiness about the police response time to a police detective assigned to follow up on his case. The detective responded that the Petitioner’s call to the police had been a lower priority than “aggravated assaults” and “injury accidents” to which the police were also responding at the time because the Petitioner was no longer in danger. Finally, the report stated that in response, the Petitioner told the detective that he had “almost been assaulted”.

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.

In the Petitioner's personal statement submitted with the U petition, the Petitioner provides an account of the criminal activity that is partly inconsistent with accounts in the police report and the Supplement B form. He stated that one of the perpetrators hit him in the head with a chain and that his ear was cut and bleeding, neither of which are stated in the police report. He also asserted that the perpetrators told him and his friend that they had guns, which the police report also did not state. The Petitioner described the police responding to the incident as behaving accusatorily toward the Petitioner and his friend, as though they had been the ones to do something wrong and as if responding to the incident had been a nuisance to the police. Despite his ear bleeding, the police officer did not ask how the Petitioner was feeling for a long time. The Petitioner explained that he did not want to go to the hospital because he could not pay for medical treatment, so he told the police he was okay and did not tell them the perpetrators had hit him in the head. He stated that the police's treatment made him worry that he would be arrested or deported because of his immigration status, and that he was more afraid of the police than the perpetrators who stole the car.

The Petitioner also submitted a statement from the friend and co-worker who was present at the time of the crime, which is also partly inconsistent with both the police report and the Supplement B, as well as the Petitioner's statement. The friend's statement described a physical altercation between the Petitioner and the perpetrators, two of whom pulled out a chain and hit the Petitioner and the third who pulled out a gun and came toward the friend and the Petitioner. Additionally, unlike the police report, neither the Petitioner's statement nor the friend's statement mention the fact that one suspect may have had a knife.

The Director denied the U petition, finding that the Petitioner had not met established that he was the victim of qualifying criminal activity. Specifically, the Director found that although the certifying official indicated that the Petitioner was a victim of felonious assault in part 3.1 of the Supplement B, they did not cite to the corresponding Colo. Rev. Stat. Ann. provision for that offense in part 3.3 as the criminal offense that was actually investigated or prosecuted. The Director also concluded that the Petitioner had not established that third degree assault or the second degree burglary, the offenses indicated in part 3.3 of the Supplement B as having been detected, are qualifying criminal activities or are substantially similar to the qualifying criminal activity of felonious assault in Colorado, such as first degree assault. Finally, the Director determined that as the Petitioner had not established that he was the victim of qualifying criminal activity, he necessarily had also not established that he suffered substantial physical or mental abuse as the result of having been a victim of qualifying criminal activity. The Petitioner has not overcome the Director's determinations on appeal.

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). 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 . . .”).

We acknowledge that, on the Supplement B in part 3.1, the certifying official in this case checked the box indicating that the Petitioner was the victim of criminal activity “involving or similar to” the qualifying crime of “felonious assault.” However, a certifying official’s completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* Interim Rule, 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations).

Although part 3.1 of the Supplement B indicates that the Petitioner was the victim of felonious assault, the remainder of the document does not indicate that a felonious assault was detected or investigated. Indeed, the certifying official at part 3.3 cited only sections 18-3-204 and 18-4-203 of the Colo. Rev. Stat. Ann., referring respectively to third degree assault (misdemeanor) and second degree burglary, as having been investigated or prosecuted, and did not include a citation for a Colorado statute that corresponds to felonious assault.² Further, the police report taken at the time of the offense classifies the incident only as vehicle theft and a reporting police officer appears to distinguish the crime of which the Petitioner was a victim as distinct from aggravated assault in the report. The police report does not identify the offense perpetrated against the Petitioner as, or cite to a Colorado statute for, a felonious assault, nor does it otherwise indicate that a felonious assault was at any time detected or investigated by the certifying agency as perpetrated against the Petitioner.

The Petitioner asserts on appeal that the [] Police Department categorized the crime as a misdemeanor assault “incorrectly” and that the underlying facts of the criminal activity of which he was a victim satisfy the elements of second degree felony assault in Colorado. He argues that the perpetrators hit him in the head with a deadly weapon, namely a chain, with the intent to cause bodily injury, consistent with a second degree felony assault under section 18-3-203 Colo. Rev. Stat. Ann. The Petitioner asserts the Director erred in not assessing whether he was a victim of second degree assault as he had argued below and instead, only considered the first degree felony assault statute.³

Although we do not diminish the harm the Petitioner 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. As stated, 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. Section 101(a)(15)(U)(i)(III) of the Act; *see also* 8 C.F.R. § 214.14(b)(3). Here, although the Petitioner asserts that he was the victim of second degree felony assault, which in relevant

² At the time of the crime, third degree assault in Colorado was a “class 1 misdemeanor”. Colo. Rev. Stat. Ann. § 18-3-204 (West 2012).

³ The Petitioner does not contend on appeal that either third degree assault or second degree burglary cited in the Supplement B are qualifying crimes or substantially similar to a qualifying crime and, as such, we do address it here.

part requires infliction of bodily injury by means of a deadly weapon, the Supplement B does not reflect that the certifying agency detected that or any other felonious assault offense under Colorado law, or otherwise detected the perpetrator's use of as a weapon against the Petitioner. Additionally, although the Petitioner asserted in these U proceedings that the perpetrator used a chain as a deadly weapon to assault him, the police report does not reflect that he or his friend reported or that the certifying agency otherwise detected the presence or use of a chain as a weapon against the Petitioner. Moreover, as previously discussed, neither the police report nor the Supplement B cite section 18-3-203 Colo. Rev. Stat. Ann. or any other felony assault statute, and they likewise do not identify a felony assault offense as having been perpetrated against the Petitioner. The record on appeal also does not include any other law enforcement records or statements from the certifying agency otherwise demonstrating that a felonious assault was detected against him. Therefore, the evidence as a whole indicates that the only offenses the certifying agency detected, investigated, or prosecuted as perpetrated against the Petitioner were second degree burglary and third degree assault. The Petitioner does not contend on appeal that either third degree assault or second degree burglary cited in the Supplement B are qualifying crimes or substantially similar to a qualifying crime and, as such, we do address it here. Accordingly, the Petitioner has not demonstrated that he is the victim of qualifying criminal activity as required.

B. 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. Section 101(a)(15)(U)(i)(I)-(IV) of the Act. As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The record shows that the Petitioner was the unfortunate victim of burglary and misdemeanor assault. However, he 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 criminal activity substantially similar to a qualifying crime under 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.