



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

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

In Re: 20882314

Date: MAR. 29, 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 additional evidence and a brief asserting his 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 remand the matter to the Director for the issuance of a new decision consistent with this 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. 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, 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). 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.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)(1). 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 October 2015 with a Supplement B signed and certified by the sergeant of the Special Victim Crime Unit with the [REDACTED] Police Department in [REDACTED] California (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment," "Felonious Assault," "Attempt to commit any of the named crimes," and "Related Crimes." The certifying official did not list any specific statutory citation(s) as the criminal activity that was investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted and any known injury to the Petitioner, the certifying official indicated that, "an unknown suspect forced [the Petitioner] to get on the ground, take off his clothes, and threatened that he would be shot if he did not comply. [The Petitioner] was required to remain on the ground while the suspect searched his clothes and took his iPhone." The certifying official further stated that the Petitioner was able to escape when the suspect got distracted. The police incident report accompanying the Supplement B identifies the incident as a "Robbery, Street or Public Place, w/ Force." The narrative portion of the incident report sets forth an account consistent with that in the Supplement B and provides further detail about the incident including that the suspect approached the Petitioner and asked him if he wanted to purchase marijuana. When the Petitioner declined, the suspect said, "arrite [*sic*], I'm gonna [*sic*] rob you." The Petitioner did not suffer any injuries as he was able to jump up and flee during the robbery. The Petitioner submitted a personal statement which confirms the information in the incident report.

The Director issued a request for evidence (RFE) seeking, among other things, a Supplement B with an original signature from the certifying official and evidence that the crimes listed on the Supplement B were qualifying criminal activity or similar to those crimes. In response, the Petitioner submitted an updated Supplement B with an original signature from the certifying official and a copy of previously submitted evidence.² In the updated Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment," "Felonious Assault," and "Attempt to commit any of the named crimes." The certifying official listed sections 211 (Robbery), 236 (False Imprisonment), 240 (Assault), 242 (Battery), 422 (Criminal Threats), and 664 (Attempted Crimes) of the California Penal Code (Cal. Penal Code) as the specific statutory citations investigated or prosecuted. The certifying official's

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.

² The Petitioner also submitted a copy of the 2015 Supplement B and initial evidence that he included with his U petition.

description of the criminal activity being investigated or prosecuted mirrored that in the initial Supplement B. After reviewing the evidence in the record, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity, including felonious assault and false imprisonment, as the Petitioner asserted. Accordingly, the Director concluded that the Petitioner also necessarily did not establish he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

On appeal, the Petitioner contends that he was the victim of the qualifying crime of false imprisonment. Alternatively, the Petitioner contends that he is the victim of qualifying criminal activity because the combination of the robbery and battery he suffered is substantially similar to the qualifying crime of felonious assault.³

B. The Petitioner Is a Victim of False Imprisonment

The Act requires 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. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. 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 . . .”).

On appeal, the Petitioner asserts that he was the victim of the qualifying crime of false imprisonment under Cal. Penal Code section 236 because that crime was certified on the Supplement B as having been investigated or prosecuted. The Petitioner further argues that the underlying facts of the crime set forth in the incident report satisfy the elements of false imprisonment. He emphasizes that the perpetrator “forced [him] to get on the ground, take off his clothes, and then threatened that he would shoot [him] if he did not comply.” He reiterates that during this incident the perpetrator forced him to remain on the ground while he rifled through his pant pockets and that he was “extremely scared that [the perpetrator] was going to shoot [him].”

We acknowledge the Petitioner’s arguments that he was also the victim of the qualifying crime of false imprisonment during the robbery detected against him based on the factual circumstances of the offense. However, evidence describing what may appear to be, or hypothetically could have been

³As the Petitioner has demonstrated that he was the victim of the qualifying crime of false imprisonment, we need not further address his arguments regarding being the victim of the qualifying crime of felonious assault.

investigated or charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence indicating, by a preponderance of the evidence, that relevant law enforcement authorities in fact detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. §§ 214.14(a)(2), (a)(9), (b)(3). Nevertheless, upon review, the preponderance of the evidence demonstrates that the certifying agency also detected and investigated the qualifying crime of false imprisonment as committed against the Petitioner during the robbery, as he asserts.

In denying the U petition, the Director noted that the initial Supplement B and the incident report did not cite the criminal statute for false imprisonment and the incident report referenced only a robbery. However, in both Supplements B, the certifying agency checked the box in Part 3.1 indicating that the Petitioner was the victim of criminal activity involving "false imprisonment," among other crimes. The certifying official, in the updated Supplement B, also specifically identified section 236 of the California Penal Code corresponding to false imprisonment as one of the criminal activities detected and investigated as having been perpetrated against the Petitioner. Additionally, both the certifying official and responding police officer described criminal conduct in the Supplement B forms and incident report, respectively, that is consistent with false imprisonment. At the time of the crime and as argued by the Petitioner, false imprisonment was identified in section 236 of the Cal. Pen. Code as "the unlawful violation of the personal liberty of another." Cal. Penal Code § 236 (West 2012). California courts have held that "personal liberty is violated when the victim is compelled to remain where he does not wish to remain, or to go where he does not wish to go." *People v. Von Villas*, 10 Cal. App. 4th 201, 255 (1992); *see also People v. Haney*, 75 Cal. App. 3d 308, 313 (1977) (stating that "[a]ny exercise of force or express or implied threat of force by which in fact the person is restrained from his liberty, compelled to remain where he does not wish to remain, or to go where he does not wish to go, is such [false] imprisonment."). Here, the responding police officer noted in his report that, "[the perpetrator] told [the Petitioner] to get on the ground and told him to take his clothing off or else he would be shot." Likewise, the certifying official, in describing the crime against the Petitioner, consistently stated that the perpetrator "forced [the Petitioner] to get on the ground" and "threatened that he would be shot if he did not comply." The certifying official further stated that "[the Petitioner] was required to remain on the ground while the [the perpetrator] searched his clothes and took his iPhone." The accounts of the offense in the incident report and Supplement B forms are consistent with the offense of false imprisonment under California law having been detected. Based on the foregoing, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected false imprisonment as perpetrated against him. Consequently, the Petitioner has established that he is the victim of qualifying criminal activity.

III. CONCLUSION

The Petitioner has overcome the Director's determination below as he has demonstrated that he is a victim of qualifying criminal activity. Accordingly, the matter will be remanded to the Director for consideration of whether the Petitioner satisfies the remaining statutory eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of anew decision consistent with the foregoing analysis.