



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

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

In Re: 21819081

Date: MAY 10, 2022

Motion on Administrative Appeals Office 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 Petitioner’s 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. We dismissed the Petitioner’s subsequent appeal. The matter is now before us on a motion to reopen. In support of his motion, the Petitioner submits a brief, additional evidence, and previously submitted evidence. Upon review, we will dismiss the motion.

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).

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 that the petitioner possesses information concerning the qualifying criminal activity and has been, is being, or is likely

to be helpful in the investigation or prosecution of it.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. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit. Here, the Petitioner has not established that his motion to reopen should be granted.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in November 2015 with a Supplement B signed and certified by the Chief Municipal Prosecutor of the [redacted] Municipal Prosecutor's Office in [redacted] New Jersey (certifying official), relating to criminal activity of which the Petitioner was a victim in [redacted] 2012. At part 3.1 of the Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Other:" and entered "Robbery" in the corresponding space. At part 3.3, the certifying official cited to section 2C:15-1 (robbery) of the New Jersey Statutes Annotated (N.J. Stat. Ann) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity investigated or prosecuted, the certifying official indicated that "[t]wo defendants attacked [the P]etitioner from behind and repeatedly punched him in the face trying to take his bag and personal belongings." The certifying official further indicated that the Petitioner "sustained a lip laceration and left eyebrow laceration, requiring stitches, also right temporal, posterior ear pain[, b]ruise (ecchymosis) to right side temporal and cheek area, [and] hematoma to right forehead" and cited to an attached report. Consistent with the Supplement B, an incident report from the [redacted] Police Department also identified the incident as a robbery. The incident report contained a case narrative similar to that in the Supplement B, indicating that on the day of the incident, the Petitioner reported that two perpetrators attacked him from behind and repeatedly punched him in the face when he was walking home from work in [redacted] 2012. The reporting officer further indicated the Petitioner accepted medical attention and was taken to a hospital for stitches to his face. The Petitioner also submitted a personal statement describing the incident and hospital records related to his emergency room care.

The Director subsequently denied the U petition after issuing, and receiving the Petitioner's response to, a request for additional evidence (RFE) to establish that law enforcement had detected qualifying criminal activity perpetrated against the Petitioner. The Director concluded that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. In the decision, the Director found that the Petitioner was a victim of the crime of robbery under section 2C:15-1 of the

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.

N.J. Stat. Ann. Further, the Director specifically determined that, contrary to the Petitioner's assertions, the record did not support a finding that the qualifying crime of felonious assault under New Jersey law was detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Lastly, the Director determined that the Petitioner had not demonstrated that the crime detected, robbery, is substantially similar to one of the enumerated qualifying crimes.

In his previous appeal before us, the Petitioner submitted an updated personal statement and argued that the Director erred in determining he was not a victim of a qualifying crime. Specifically, he asserted that law enforcement had in fact detected, investigated, or prosecuted as perpetrated against him the crimes of robbery, aggravated assault in the third degree (the equivalent of felonious assault in New Jersey), and unlawful criminal restraint. He also argued that the factual circumstances of the criminal activity, as described in the police incident report, demonstrated that the crime was substantially similar to the New Jersey equivalents of the qualifying crimes of felonious assault and unlawful criminal restraint, namely aggravated assault under section 2C:12-1 of the N.J. Stat. Ann. and criminal restraint under section 2C:13-2.

In our prior decision dismissing the Petitioner's appeal, we determined that there was insufficient evidence to establish that law enforcement had detected, and that he was the victim of, a qualifying crime. We determined the record reflected that robbery, the crime detected as perpetrated against the Petitioner, is not a qualifying crime and is not substantially similar to the qualifying crimes of felonious assault and unlawful criminal restraint, as the Petitioner asserted.

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

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 . . .").

As stated, in our prior decision on appeal, we determined that the record did not sufficiently establish that law enforcement had detected a qualifying crime as having been perpetrated against the Petitioner, as required. Specifically, we noted in our appeal decision that, although the box for "felonious assault" was checked off in part 3.1 of the Supplement B, neither the Supplement B nor the incident report cited to, or otherwise referenced the corresponding criminal statutes for, any felony level assault or criminal restraint offenses as having been investigated or prosecuted by law enforcement. The certifying official also did not check the box for "unlawful criminal restraint" in the Supplement B

and provided only the statutory citation for robbery under section 2C:15-1 of the N.J. Stat. Ann. as the criminal activity that was detected, investigated, or prosecuted. The incident report likewise only categorized the crime as a robbery. As such, we determined that the checked box on the Supplement B indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault” was inconsistent with the remainder of the record. Likewise, we found the Petitioner’s claim on appeal that he was also the victim of unlawful criminal restraint to be inconsistent with the record. We noted also that the Petitioner had not concretely addressed or submitted any additional evidence relevant to these inconsistencies or to otherwise establish that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault or unlawful criminal restraint (or any other qualifying criminal activity under New Jersey law) after initially classifying and describing the offense as a robbery.

On motion, the Petitioner now submits a new updated Supplement B, signed in January 2022 by the same certifying official, which he asserts demonstrates that he is the victim of the qualifying crimes of felonious assault and unlawful criminal restraint under New Jersey law. On the updated Supplement B, at part 3.1, the certifying official again checked the box indicating the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault” but this time also checked the box for “Unlawful Criminal Restraint.” At part 3.3, in addition to citing to section 2C:15-1 (robbery) of the N.J. Stat. Ann. as the statute for the criminal activity investigated or prosecuted, the certifying official added citations to sections 2C:12-1(b)(7) (aggravated assault, a crime of the third degree and a felony) and 2C:13-2 (criminal restraint) of the N.J. Stat. Ann. The certifying official’s descriptions of the criminal activity, the Petitioner’s injuries, and his helpfulness to law enforcement are otherwise identical to those in the original Supplement B.

We acknowledge that the updated Supplement B now includes citations to New Jersey equivalents of the qualifying crimes of felonious assault and unlawful criminal restraint. However, the updated Supplement B, when read as a whole and in conjunction with other evidence in the record, still does not establish by a preponderance of the evidence that law enforcement actually detected, investigated, or prosecuted the qualifying crimes of felonious assault and unlawful criminal restraint as perpetrated against the Petitioner, as he asserts. *See* 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”).

Here, the additional citations to the New Jersey criminal statutes for aggravated assault and unlawful criminal restraint in the updated Supplement B are inconsistent with other relevant evidence in the record, including the previous Supplement B by the same certifying agency and the underlying police incident report. The record on motion does not include a statement from the certifying official or any additional law enforcement records or documentation that addresses the noted discrepancies in the two Supplement B forms and the police incident report, or otherwise explains why, nearly 10 years after the incident in question, the certifying official added the statutory citations for aggravated assault and criminal restraint for the first time in the updated Supplement B as offenses that were also investigated or prosecuted. Accordingly, while we do not diminish the harm the Petitioner describes having suffered, the preponderance of the evidence does not demonstrate that law enforcement at any time actually detected, investigated, or prosecuted the qualifying crimes of felonious assault or unlawful criminal restraint under New Jersey law as perpetrated against him. Instead, as we previously concluded, the record indicates that law enforcement detected, investigated, or prosecuted, as

perpetrated against the Petitioner, the crime of robbery under section 2C:15-1 of the N.J. Stat. Ann., which is not a qualifying crime.

Relatedly, the Petitioner also reasserts he was the victim of the qualifying crime of felony aggravated assault, a crime of the third degree, under section 2C:12-1(b)(7) of the N.J. Stat. Ann. and criminal restraint under section 2C:13-2 of the N.J. Stat. Ann., based on the factual circumstances of the criminal activity.² Specifically, he argues that the evidence indicates he suffered “significant bodily injury,” consistent with an aggravated assault under section 2C:12-1(b)(7), based on the descriptions of his injuries on the Supplement B forms, incident report, and hospital records. He asserts that as a result of the assault perpetrated against him during the robbery, his vision was impaired because of swelling over his left eye, he was dizzy and almost lost consciousness at one point, and he was unable to speak and eat without severe pain for many weeks. Similarly, he states that he was restrained unlawfully and exposed to risk of “serious bodily injury” as required for criminal restraint under section 2C:13-2 of the N.J. Stat. Ann. However, as we noted previously, 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 law enforcement actually 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)(5).

In this case, although we do not dispute that the Petitioner was injured during the robbery, as we stated above, the record does not establish that law enforcement detected a felony level assault or criminal restraint under New Jersey law as having occurred. Similarly, the record does not support the Petitioner’s assertions that law enforcement detected the perpetrators as having caused or attempted to cause “significant bodily injury” to the Petitioner, as required to establish aggravated assault in the third degree in New Jersey, or that they restrained him in circumstances exposing him “to risk of serious bodily injury,” consistent with criminal restraint. New Jersey law defines “significant bodily injury” as “bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.” N.J. Stat. Ann. § 2C:11-1 (West 2012). “Serious bodily injury,” on the other hand, is defined as “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” *Id.* Here, notwithstanding the Petitioner’s descriptions of his injuries, the Supplement B forms, incident report, and contemporaneous hospital emergency room records indicate only that he suffered lip and eyebrow lacerations requiring stitches, ear pain, and bruising on his face. Nowhere in the record does it appear that law enforcement detected the Petitioner’s injuries to include the temporary loss of function of any of his bodily members or organs or the loss of any of his five senses. The record similarly does not indicate that law enforcement detected any circumstances exposing the Petitioner to the risk of bodily injuries which would create a substantial risk of death or which would cause permanent disfigurement, or protracted loss or impairment of the function of any of his bodily members or organs.

² A person is guilty of aggravated assault, a felony crime of the third degree, under New Jersey law when that person “[a]ttempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury.” N.J. Stat. Ann. § 2C:12-1(b)(7) (West 2012). Criminal restraint is defined as unlawfully restraining someone “in circumstances exposing them to risk of serious bodily injury,” or holding a person “in involuntary servitude.” N.J. Stat. Ann. § 2C:13-2 (West 2012).

Based on the foregoing, the Petitioner has not established, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault or unlawful criminal restraint as perpetrated against him. Instead, as noted by the Director as well as on appeal, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and he was the victim of, robbery, which is not a qualifying crime.³

C. 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's new evidence on motion does not overcome our previous determination on appeal that the preponderance of the evidence did not establish that he is the victim of qualifying criminal activity, as section 101(a)(15)(U)(i) of the Act requires. Accordingly, the Petitioner has not established his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The motion to reopen is dismissed.

³ As the Petitioner does not contest our additional finding on appeal that robbery is not substantially similar to felonious assault or another qualifying crime, we do not further reach that issue here on motion.