



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

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

In Re: 22717795

Date: NOV. 03, 2022

Appeal of Vermont 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 a brief statement asserting that he was the victim of qualifying criminal activity and 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 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' 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 March 2016 with a Supplement B signed and certified by a sergeant in the [redacted] Police Department in [redacted] California (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of felonious assault, and criminal activity involving or similar to "Other:" and wrote in section 211 (robbery) of the California Penal Code (Cal. Penal Code). The certifying official listed section 211 of the Cal. Penal Code as the specific statutory citations 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 the Petitioner "was confronted by two suspects at a parking lot who demanded money from him" and that the Petitioner was receiving psychological treatment to "help him overcome his fear of being assaulted as a result" of the incident. The police report accompanying the Supplement B identifies the incident as felony robbery. The narrative portion of the police report provides that the Petitioner returned to his vehicle and was confronted by two suspects who asked if the Petitioner had any money. The Petitioner gave the suspects a \$20 bill, one suspect said, "thanks for the twenty" and both suspects then left the scene. The Petitioner submitted a personal statement that confirms the information in the police report. 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.

On appeal, the Petitioner's sole argument is that the record before the Director established that his U petition should be approved, as he met the preponderance of the evidence standard. The Petitioner does not provide specific arguments explaining how he believes the Director erred in her decision.

B. The Petitioner Was 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

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.

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 a preliminary matter, the original Supplement B submitted with the Petitioner’s U petition and the remaining evidence in the record do not reference any felonious assault provision under California law or otherwise indicate that felonious assault was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The police report does not reference any felonious assault as perpetrated against Petitioner, or an attempt to do so. Instead, the report indicates that law enforcement detected and investigated as perpetrated against the Petitioner the crime of robbery under California law. Moreover, an updated Supplement B, submitted in response to a request for evidence (RFE) issued by the Director, was certified by a different lieutenant in the [REDACTED] Police Department nearly five years after the certification of the original Supplement B and six years after the incident in question. The updated Supplement B does not provide any additional citation in the Cal. Penal Code that was investigated or prosecuted, aside from section 211, which was cited in the initial Supplement B. While the narrative provided by the lieutenant uses the phrase “felonious assault,” this rewording of events does not contain further details beyond those provided in the initial Supplement B.

In regard to the Petitioner’s contention that he was the victim of the qualifying crime of felonious assault, we note that in part 3.1 of the updated Supplement B the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault.” We also note that in part 3.3, the certifying official cited to robbery under section 211 of the Cal. Penal Code as a specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. The updated Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *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”).

California law defines assault as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2020). For an assault to be classified as a felony, however, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. *See e.g.*, Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2020) (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults). Neither the original or updated Supplement B, nor the police report, cite to or reference any felony-level assault provision under California law as detected, investigated, or prosecuted as perpetrated against the Petitioner. The Petitioner has not established that he was the victim of the qualifying crime of felonious assault. The Petitioner bears

the burden of establishing eligibility, including that he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement, and 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). The Petitioner has not established by a preponderance of the evidence that he was victim of the qualifying crime of felonious assault.

C. Robbery under California Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner also contends that he was the victim of qualifying criminal activity because the nature and elements of robbery under section 211 of the Cal. Penal Code are substantially similar to those of the qualifying crime of felonious assault. When a certified offense is not a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act (providing that 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”); 8 C.F.R. § 214.14(a)(9) (providing that 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). Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction’s statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense “involved,” or was “substantially similar” to, a “qualifying crime or qualifying criminal activity” as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9).

At the time of the incident, California law defined robbery as “the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211 (West 2013). We acknowledge that robbery under section 211 of the Cal. Penal Code is a felony offense. However, it is otherwise distinct in its elements from California’s equivalents to the qualifying crime of felonious assault. Robbery requires a taking of personal property as an element of the offense, which is not required under any of California’s felonious assault provisions. Also unlike the felonious assault provisions, robbery does not require the use of a weapon, force likely to produce great bodily injury, or any other aggravating circumstance, and it can be committed “without attempting to inflict violent injury, and without the present ability to do so” *People v. Wolcott*, 665 P.2d 520, 525 (Cal. 1983). Based on the foregoing, the Petitioner has not established the nature and elements of robbery are substantially similar to a felonious assault in California and has not demonstrated that he was a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act.

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.

ORDER: The appeal is dismissed.