



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

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

In Re: 22316656

Date: SEP. 19, 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 she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief reasserting her 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 her U petition in February 2016 with a Supplement B signed and certified by the supervisor of 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 “Felonious Assault” and “Other: Robbery.” The certifying official listed section 211 (Robbery) of the California Penal Code (Cal. Penal Code) as the specific statutory citation 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 stated that, “[the Petitioner] was sitting down near the bus stop when she was approached by two suspects. One suspect asked for money and [the Petitioner] opened her purse and was getting money. Suspect then grabbed [the Petitioner’s] pursue and tried to take it.” The certifying official further stated that another suspect “pulled [the Petitioner’s] hair and started hitting her in the face with a closed fist.” The police report accompanying the Supplement B lists the offenses which occurred as “664 PC/211 PC; FTA: Robbery; Fel” and “182(A)(1) PC: Conspiracy Commit Crime; Fel.” The narrative portion of the police report provides further detail about the incident including that the Petitioner was treated at a local hospital for a laceration to the bridge of her nose and swelling to her face. The Petitioner submitted a personal statement that confirms the information in the police report.

After reviewing the evidence in the record, the Director issued a request for evidence (RFE) for additional evidence that the crime listed on the Petitioner’s Supplement B was a crime related to those listed in the statute and implementing regulations. In response, the Petitioner provided, among other things, an updated Supplement B again indicating that she was the victim of criminal activity involving or similar to “Felonious Assault.” However, the certifying official amended the citations for the specific statutes investigated or prosecuted as perpetrated against the Petitioner, listing sections 664 (Attempted Crimes), 211 (Robbery), and 245(a)(4)(Assault by Means Likely to Cause Great Bodily Injury”) of the Cal. Penal Code. The certifying official explained that the suspects “attempted to rob [the Petitioner]. During the attempted robbery[,] suspects pulled [the Petitioner] by her hair and punched her several times in the face.”

After reviewing the evidence in the record, the Director denied the U petition, concluding that the Petitioner was not a victim of the qualifying crime of felonious assault as certified on the updated Supplement B. Specifically, she determined that law enforcement did not detect, investigate, or

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.

prosecute, and the Petitioner was not the victim of, felonious assault under California law because, among other things, “the record d[id] not show that a deadly weapon or instrument, firearm or machinegun [sic] was used during the robbery. . . [or] . . . that the injuries [she] sustained equate[d] to a significant and substantial physical injury nor that a means of force likely to produce great bodily injury was used against [her].” Additionally, the Director noted that the Petitioner did not provide any explanation as to why the certifying agency added additional penal codes on the updated Supplement B.

On appeal, the Petitioner contends that law enforcement investigated and detected, and she was the victim of, a felonious assault based on the evidence in the record.² Alternatively, the Petitioner contends that she was the victim of felonious assault based on the factual circumstances of the offense.

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 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); *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 . . .”).

Regarding the Petitioner's assertions that she was a victim of the qualifying crime of felonious assault, we acknowledge that in Part 3.1 of the updated Supplement B, the second certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault.” We also acknowledge that in Part 3.3 of the updated Supplement B, the second certifying official cited to “Attempted Robbery” and “Assault with Force Likely to Produce Great Bodily Injury” under sections 664/211 and 245(a)(4) of the Cal. Penal Code respectively as the specific statutory citations investigated or prosecuted as perpetrated against the Petitioner. However, 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) (providing 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”).

The original Supplement B submitted with the Petitioner's U petition and the remaining evidence in the record do not reference any felony 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, provided with the original Supplement B, does

² Specifically, the Petitioner asserts that the Director failed to follow the “any credible evidence” standard at section 214(p) of the Act and USCIS’ Interim Rule directing the agency to broadly interpret the categories of qualifying crimes and give greater weight to the certifying agency’s determination on the Supplements B regarding the qualifying criminal activity.

not specifically identify any assault as perpetrated against Petitioner, or an attempt to do so. Instead, the report states that law enforcement detected and investigated the crime of robbery under California law. The narrative in the police report indicates that a police officer responded to the report of an attempted robbery and listed statutory citations for attempted robbery and conspiracy to commit a crime as the offenses investigated and detected during the incident. Moreover, the updated Supplement B was certified by a different supervisor with the [REDACTED] Police Department more than five years after the certification of the original Supplement B, and almost twelve after the incident in question. It is also not accompanied by a statement from the second certifying official or any other evidence explaining the reasons behind the additional statutory citation, and describes criminal activity similar to that described on the original Supplement B. The Petitioner bears the burden of establishing eligibility, including that she 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 she was victim of the qualifying crime of felonious assault.

The Petitioner contends on appeal that, based on the factual circumstances of the offense committed against her, she was the victim of an assault by force likely to cause great bodily injury, a felony. However, evidence describing what may appear to be, or hypothetically could have been investigated or 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. *See* 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). 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 law enforcement as perpetrated against the petitioner. *See id.* As stated above, there is not sufficient evidence in the record to establish that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault, or any other qualifying crime, as perpetrated against the Petitioner. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and she was the unfortunate victim of, robbery.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 she was the victim of qualifying criminal activity, or an offense that is substantially similar to a qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, that she was a victim of a qualifying crime or any similar activity to a qualifying crime at section 101(a)(15)(U)(iii) of the Act.

³ Because the Petitioner does not expressly argue that the nature and elements of robbery are substantially similar to felonious assault or any other qualifying crime under California law, we do not address it here.

Therefore, the Petitioner is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.