



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

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

In Re: 25612463

Date: APRIL 11, 2023

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), as a victim of qualifying criminal activity. 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 a victim of the qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that he has established eligibility for the benefit sought.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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

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. 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. Relevant Facts and History

The Petitioner filed his U petition in 2017 with a Supplement B signed and certified in June 2016 by the District Attorney for [REDACTED] County, Pennsylvania (certifying official). The certifying official indicated the event forming the basis for the U petition occurred in July 2015, but did not check any of the boxes pertaining to qualifying criminal activities under Part 3.1, and instead notated “simple assault.” In Part 3.3. of the Supplement B, the certifying official listed section 2701(a)(1) of the Pennsylvania Consolidated Statutes (Pa. Cons. Stat.) as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. When asked to provide a description of the criminal activity, the certifying official stated that the “[v]ictim was struck about the face and the back of the head by the defendant” and the known injuries were “swelling on the left eye and marks on his head and legs.” The Petitioner submitted his personal statement in which he stated that the perpetrator attacked him while he was exiting his brother’s grocery store – the perpetrator lunged at him with closed fists, hit him in the back of the head and face, and kicked him in the leg. The Petitioner stated that he sustained “minor physical injuries, mainly a headache, but what I have been most affected by is that I am now afraid and have terrible anxiety.”

The Director issued a request for evidence (RFE) asking the Petitioner to submit additional evidence, including a new Supplement B as the submitted Supplement B was not signed by the certifying official within six months of the filing of the Form I-918, as required. In response to the RFE, the Petitioner submitted a new Supplement B and an updated statement. In Part 3.1 of the new Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault.” After reviewing the Petitioner’s response, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Director noted that although the updated Supplement B indicated that the Petitioner was the victim of felonious assault, there was no other evidence in the record indicating that law enforcement detected, investigated, or prosecuted felonious assault perpetrated against the Petitioner; in this regard, the certifying official provided only the statutory citation for simple assault under Pennsylvania law, a fact that was supported by information contained in the accompanying police report. The Director then concluded that simple assault is not a qualifying crime under the Act and is not substantially similar to any qualifying crime. The Director also noted that the record reflected that any injury suffered by the Petitioner was minor.

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.

On appeal, the Petitioner asserts the following: (1) the Director erred by not reading the totality of 8 C.F.R. § 214.14(a)(9) which “lists crimes as qualifying criminal activity, saying very clearly that such activity may include one or more of the following or any similar activities . . . the use of the language in the article is indicative that it is not an exhaustive list, and, further on, the article indicates that the attempt to commit any of the crimes listed will also be considered as qualifying criminal activity;” (2) the Director did not take into account essential elements regarding the behavior and intention of the perpetrator – the perpetrator saw that he had money and waited for him outside the store so that he could rob the victim which is stalking, an additional qualifying criminal activity, and the perpetrator’s sudden unprovoked attack as well as threatening and derogatory statements were a declaration of intention to cause serious injury; and (3) aggravated assault under Pennsylvania law includes the attempt to cause serious bodily injury, regardless of the charges levied against the perpetrator.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

The Act requires U petitioners to demonstrate their helpfulness 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, 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 . . .”).

In this case, the Petitioner has not met his burden of establishing by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. At the outset, in regard to the Petitioner’s contention that the factual circumstances of the crime establish that he was the victim of both felonious assault and stalking, evidence of 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. Petitioners must establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity “in violation of Federal, State, or local criminal law.” Sections 101(a)(15)(U)(i)(III), (iii) 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 the certifying agency as perpetrated against the petitioner. *Id.* Here, the Petitioner has not established that law enforcement actually detected, investigated, or prosecuted felonious assault or stalking as perpetrated against him.

We acknowledge 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.” 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 crimes 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”). Both the original and updated Supplement B provided the statutory citation for simple assault as the specific provision of law detected, investigated, or prosecuted. The police report, which accompanied the original Supplement B, does not reference any felonious assault as perpetrated against Petitioner, or an attempt to do so. Instead, the report indicated that law enforcement detected and investigated as perpetrated against the Petitioner the crime of simple assault under Pa. Cons. Stat section 2701(a)(1). Moreover, the updated Supplement B was not accompanied by a statement from the certifying official or any other evidence explaining the reason why the listed criminal activity was revised.

Considering the foregoing, the updated Supplement B’s checked box of “Felonious Assault” is inconsistent with the information provided in the remainder of the record, including the original Supplement B and the police report, which served as the basis for the certification of both Supplements B. The Petitioner has not concretely addressed these inconsistencies or submitted any additional evidence that is either relevant to the inconsistencies or otherwise establishes that law enforcement, after initially classifying and describing the offense as a simple assault, actually detected, investigated, or prosecuted the qualifying crimes of felonious assault as perpetrated against him. In these proceedings, the Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); Chawathe, 25 I&N Dec. at 375. Moreover, 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). 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, stalking, or any other qualifying criminal activity as perpetrated against him. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and he was the victim of, simple assault under Pennsylvania law, which is not a qualifying crime under the Act.

C. Simple Assault Under Pennsylvania Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner contends that he was the victim of qualifying criminal activity because the circumstances of the offense establish that he was, in fact, the victim of aggravated assault as aggravated assault under Pennsylvania law includes the attempt to cause serious bodily injury, regardless of the charges levied against the perpetrator. In addition, he contends that he was the victim of stalking. He asserts that in his case, the perpetrator saw him inside his brother’s grocery store, “saw that he was counting money, went outside to wait for him, and the minute he walked out jumped him immediately with the intention of robbing him, and resorted to whatever means necessary to accomplish his purpose. His intentions were frustrated because [his] brother, who owns the store, saw what was happening through the security camera and came to the rescue.” He argues that had his

brother not intervened during the assault, the situation had the potential be one involving serious injury.

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).

Under Pennsylvania law, for an assault to be classified as a felony, there must be an aggravating factor present. At the time of the offense against the Petitioner, Pennsylvania law defined aggravated assault, under section 2701(2) of the Pa. Cons. Stat., in pertinent part, as an attempt to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life, or attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. “Serious bodily injury” refers to 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.² In addition, at the time of the offense against the Petitioner, a person committed stalking, under Pennsylvania law 2709.1 of the Pa. Cons. Stat, if they engaged in a course of conduct or repeatedly commits acts toward another person, or repeatedly communicates to another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

The evidence of record indicates that the perpetrator punched the Petitioner on his head and kicked him. The original Supplement B describe the Petitioner’s injuries as swelling on the left eye and marks on his head and legs. While we do not question the lasting emotional impact the Petitioner’s describes feeling during, and as a result of, the incident, the evidence in the record does not reflect that he sustained serious bodily injury or indicate the presence of any other aggravating factor under section 2701(2) of the Pa. Cons. Stat. Therefore, the Petitioner has not established by a preponderance of the evidence that simple assault under Pennsylvania law is substantially similar to the state equivalent to felonious assault. In addition, with respect to stalking, the evidence indicates that the assault was an isolated crime of opportunity and the perpetrator did not repeatedly commit acts or communicate with the Petitioner. Considering the foregoing, the evidence does not establish that the Petitioner was a

² Section 2602 of the Pa. Cons. Stat.

victim of stalking under section 2709.1 of the Pa. Cons. Stat. Instead, the record shows that he was the unfortunate victim of simple assault under section 2701(a)(1) of the Pa. Cons. Stat.

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, or an offense that is substantially similar to a qualifying criminal activity, he 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 he 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. Therefore, the Petitioner is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.