



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

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

In Re: 25965872

Date: APRIL 12, 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 by the Sergeant of Police for the [redacted] Illinois Police Department (certifying official). The certifying official did not check any of the boxes pertaining to qualifying criminal activities under Part 3.1, and instead, notated that the Petitioner was the victim of criminal activity involving or similar to “Robbery/Armed” and cited to section 5/18-2 of chapter 720 of the Illinois Compiled Statutes Annotated (Ill. Comp. Stat. Ann.) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, and the involvement of, or any known or documented injury to the Petitioner, the certifying official indicated only: “Per report: The above named individual was the victim of robbery while at work.” The Supplement B also indicated that there were no injuries listed in the police report.

The police report accompanying the Supplement B classified the incident as “robbery – armed: handgun” and indicated that the Petitioner was a victim of an armed robbery while working as a clerk at a [redacted] restaurant. Specifically, the police report stated the following:

Unknown offender entered the [redacted] at the address of occurrence and ordered food. [Redacted]. When the unknown offender was about to receive his food, he displayed a dark colored handgun and demanded the money from the register by stating ‘open the f***** register.’ At that time, [redacted](victim and complainant) and [Petitioner](victim and complainant) ducked down to the floor and crawled to the back of the store and contacted police. At that time, unknown offender approached the customers inside of the store and took unknown proceeds from unknown (victim and complainant) who he ordered to the floor at gunpoint. The unknown offender proceeded to [redacted] (victim and complainant) who were seated at a table and demanded their property [redacted]. (Victim and complainant) was holding USC \$18 in her right hand and the unknown offender forcibly took the money from her and [redacted]. (Victim and complainant) handed an empty wallet to unknown offender. After receiving this property, the unknown offender fled the [redacted]

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.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity or criminal activity substantially similar to the qualifying crimes. On appeal, the Petitioner argues that armed robbery under section 5/18-2 of chapter 720 of the Ill. Comp. Stat. Ann. is substantially similar to the qualifying crime of felonious assault. The record does not support this claim.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crime of Felonious Assault

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 . . .”).

In the present case, the certifying official did not check the box pertaining to felonious assault in the Supplement B but instead indicated that the Petitioner was the victim of armed robbery and cited to armed robbery under section 5/18-2 of chapter 720 of the Ill. Comp. Stat. Ann. as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. The Supplement B does not reference any assault provision under Illinois law or otherwise indicate that any felonious assault was, at any time, detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The police report, which the certifying official referenced in the Supplement B, similarly confirmed the same, nowhere indicating that law enforcement at any time detected, investigated, or prosecuted a felonious assault as perpetrated against him. Instead, the record indicates that law enforcement detected, investigated, and prosecuted as perpetrated against the Petitioner armed robbery under section 5/18-2 of chapter 720 of the Ill. Comp. Stat. Ann.

C. Armed Robbery is Not Substantially Similar to 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).

The Petitioner contends that he was the victim of qualifying criminal activity because the nature and elements of armed robbery under section 5/18-2 of chapter 720 of the Ill. Comp. Stat. Ann. are substantially similar to those of felonious assault. The Petitioner has not established this contention by a preponderance of the evidence. At the outset, Illinois criminal law has codified a state law equivalent to felonious assault—aggravated assault under section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann—thus, armed robbery under Illinois law cannot be construed the same as, or “equivalent” to, the qualifying crime of felonious assault. Further, a comparison of the nature and elements of armed robbery under section 5/18-2 of chapter 720 of the Ill. Comp. Stat. Ann. and aggravated assault under section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann. demonstrates that they are not substantially similar as contemplated by 8 C.F.R. § 214.14(a)(9).

Section 5/18-1 of chapter 720 of the Ill. Comp. Stat. Ann. provides that a person commits robbery “when he or she knowingly takes property, except a motor vehicle . . . from the person or presence of another by the use of force or by threatening the imminent use of force.” Section 5/18-2(a)(2) chapter 720 of the Ill. Comp. Stat. Ann. provides that a person commits armed robbery when he or she violates section 18-1 and “he or she carries on or about his or her person or is otherwise armed with a firearm.” Conversely, aggravated assault under Illinois law occurs when a person commits assault, defined at section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann as “knowingly engag[ing] in conduct which places another in reasonable apprehension of receiving a battery,” with an aggravating factor related to the location or status of the victim or the use of certain weapons or devices. A battery, pursuant to 5/12-3 of chapter 720 Ill. of the Comp. Stat. Ann. is committed when a person “knowingly without legal justification by any means . . . causes bodily harm to an individual or . . . makes physical contact of an insulting or provoking nature with an individual.”

Armed robbery involves the taking of personal property by use of force or threatened use of force, and while indicating the possession of a weapon; it does not include, as an element, placing the victim in reasonable apprehension of bodily harm or other insulting or provoking physical contact. In addition, the Appellate Court of Illinois examined the elements of both aggravated assault and armed robbery and concluded that the crimes do not require the same elements to be proved as “[p]roof of a reasonable apprehension of receiving a battery is required for conviction of aggravated assault but no such element is included within the greater offense of armed robbery.”² Considering the foregoing, the nature and elements of armed robbery under section 5/18-2 of chapter 720 of the Ill. Comp. Stat. Ann. are not substantially similar to those of aggravated assault under section 5/12-2.2 of chapter 720 of the Ill. Comp. Stat. Ann. Therefore, the Petitioner has not demonstrated that he was a victim of the

² People v. Robinson, 68 Ill. App. 3d 687, 691 (Ill. 1979); see also People v. Evans, 87 Ill. App. 3d 714, 717 (Ill. 1980) (stating that “[a]ssault is simply not an element of every robbery” because ‘one can commit a robbery by force without the victim perceiving the threat of force’).

qualifying crimes of felonious assault, or any other 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.