



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

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

In Re: 29586460

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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 record did not establish that the Petitioner was the victim of qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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

To establish eligibility for U-1 nonimmigrant classification, a petitioner 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, are being, 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.

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, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioner’s

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 the petitioner 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 2016 with a Supplement B signed and certified in 2016 (2016 Supplement B) by a District Court Judge in the State of Minnesota, [REDACTED] (certifying official). In response to Part 3.1 of the Supplement B, the certifying official indicated the Petitioner was the victim of criminal activity involving or similar to felonious assault and “Other: Threats of Violence.” In response to Part 3.3, which requests the specific statutory citations for the criminal activity investigated or prosecuted, the certifying official listed Minnesota Statutes (Minn. Stat.) sections 609.222 (assault in the second degree) and 609.713 (threats of violence). The 2016 Supplement B additionally describes the factual basis for the charges, stating that in [REDACTED] 2015 the Petitioner called the police when an unknown man pounded on his door at 3:00 a.m. Approximately three hours later, the Petitioner was near his car when a suspect “approached him, hit him in the face, head, nose, and punched him three times in the abdominal area,” and threatened him with a knife. The Petitioner also noticed two other suspects near the door of his home. The suspects fled when the Petitioner’s spouse called the police. As a result of the incident, the Petitioner suffered “nose and abdominal pain, headaches, whole-body tremors and bouts of nausea” as well as “emotional and psychological harm.” The Petitioner sought medical attention at the hospital, where he reported the details of the incident to hospital staff and police.

The related police report from the [REDACTED] Minnesota Police Department indicates the offense investigated was misdemeanor fifth degree assault involving attempt to cause bodily harm in violation of Minn. Stat. section 609.224. The police narrative states that around 3:00 a.m., an unknown male knocked on the Petitioner’s door and asked to be let in because someone was trying to kill him. An ambulance subsequently took the man away. Around 6:00 a.m., the Petitioner was getting ready to leave his home when another unknown male arrived, asking about the man who had knocked at 3:00 a.m. and demanding to be let into the Petitioner’s house. When the Petitioner refused, the man punched him in the head and stomach. The police noted a “scrape on the victim’s nose from the assault” and the Petitioner was treated for nose, head, and neck pain at the hospital.

In the Petitioner’s personal statement with his U petition, he described a disruption at his family’s home at 3:00 a.m. when the first unknown man arrived and tried to break into the house, frightening his family. A few hours later when he was preparing to leave for work, he noticed two other men in the parking lot. One of them wanted to enter his house and when the Petitioner refused, the man

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.

threatened him with a knife and hit him in the head, nose, and stomach. He recalled that the police arrived and took his statement but did not ask if he needed medical care. The Petitioner was not feeling well, so he went to the hospital where he gave a statement in Spanish through an interpreter. The hospital staff asked him for a copy of the police report but he did not have one, so the staff called the police. When the police arrived at the hospital the interpreter was no longer available, but he explained the situation the best he could.

The Director issued a request for evidence (RFE) notifying the Petitioner, in relevant part, that the evidence did not establish he was the victim of qualifying criminal activity. The Director explained that although the 2016 Supplement B cited the criminal activity investigated or prosecuted as Minn. Stat. sections 609.222 (assault in the second degree) and 609.713 (threats of violence), the police report only listed misdemeanor fifth degree assault under Minn. Stat. section 609.224.

In response to the RFE, the Petitioner submitted in pertinent part medical records relating to his [redacted] 2015 hospital visit. The medical records show he arrived at the emergency room complaining of having been the victim of an assault. The Petitioner provided a consistent account of the incidents at his home and told hospital staff, through an interpreter, that the suspect punched him and threatened him with a knife. The Petitioner claimed in his RFE response that he did not know why the police report did not state that he was threatened with a knife and that he “would consider a knife as a dangerous weapon” for purposes of second degree assault and threats of violence under Minn. Stat. sections 609.222 and 609.713, respectively. He also submitted a copy of an email showing that his attorney requested the hospital records “be added . . . as a supplement to the [police] report.” In response, a lieutenant of the [redacted] Police Department wrote they were trying to determine “if it is in [their] policy to simply change the wording of an official police report to fit [the Petitioner’s] purpose because it was recorded on a secondary interview that was not police related.”

After considering the Petitioner’s RFE response, the Director denied the U petition based on a determination that he had not demonstrated he was the victim of qualifying criminal activity. The Director noted that although the Petitioner informed hospital staff the perpetrator had a knife, the [redacted] Police Department did not appear to have honored his request to change the police report to reflect that claim. The Director explained that misdemeanor fifth degree assault is not a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. Also, the 2016 Supplement B was not supported by sufficient relevant, credible evidence that the certifying agency detected, investigated, or prosecuted second degree assault and threats of violence as committed against the Petitioner rather than misdemeanor fifth degree assault.

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 . . . 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 . . .”).

On appeal, the Petitioner provides a letter from counsel stating generally that the Director’s decision was in error and that the evidence shows he was assaulted with a knife. He submits a new Supplement B signed in 2023 (2023 Supplement B) by a commander in the [redacted] Police Department, indicating at Part 3.1 that the Petitioner was the victim of criminal activity involving or similar to felonious assault and attempt to commit any of the named crimes. In Part 3.3, the 2023 Supplement B lists the statutory citation for the criminal activity investigated or prosecuted as Minn. Stat. section 609.224 (misdemeanor fifth degree assault). At Part 3.6, the 2023 Supplement B states the Petitioner “was assaulted by an unknown male with a knife” and references an attached report from the [redacted] Police Department. The attachment contains the original police reports from the day of the incident in 2015, listing misdemeanor fifth degree assault under Minn. Stat. section 609.224 as the offense that was investigated. Additionally, the attachment includes a May 2023 narrative stating that the Petitioner went to the police station and “wanted to add a supplement to a report he made in 2015.” The narrative describes the arrival of unknown males to the Petitioner’s home on the day of the [redacted] 2015 incident and states, in relevant part, that the suspect hit and punched the Petitioner and “then showed [the Petitioner] a knife. [The Petitioner] told [the officer] the knife blade was approximately 7’ [sic] long. The suspect then put the tip of the knife against his back.”

The Petitioner also resubmits medical records showing that he reported to hospital staff that the suspect threatened him with a knife. Additionally, he provides a personal statement consistent with his prior statement.

We acknowledge the Petitioner’s claim that the suspect who assaulted him threatened him with a knife and that he reported this information to medical staff and then to police at the hospital on the day of the incident. He does not provide additional argument on appeal, but argued in his RFE response that he would consider a knife a dangerous weapon for purposes of second degree assault and threats of violence under Minn. Stat. sections 609.222 and 609.713. However, 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 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. The Petitioner has not established that a certifying agency detected, investigated, or prosecuted a qualifying crime as having been perpetrated against him. We recognize that the certifying officials checked boxes corresponding to felonious assault in Part 3.1 of both the 2016 and 2023 Supplements B. However, a certifying official’s completion of Part 3.1 is not conclusory evidence that a petitioner is or was the victim of qualifying criminal activity. Part 3.1 of the Supplement B

identifies the general categories of criminal activity to which the offense(s) cited in Part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations).

Notably, while the 2016 Supplement B cites Minn. Stat. sections 609.222 (assault in the second degree) and 609.713 (threats of violence) for the criminal activity investigated or prosecuted, the 2023 Supplement B cites only Minn. Stat. section 609.224 for misdemeanor fifth degree assault. The record does not show why the [redacted] Police Department commander who signed the 2023 Supplement B removed the citations to Minn. Stat. sections 609.222 and 609.713 that had appeared in the 2016 Supplement B. The absence of those citations in the amended Supplement B does not support the Petitioner's claim that those crimes were detected, investigated, or prosecuted. Part 3.6 of the 2023 Supplement B states the Petitioner was assaulted by a person with a knife, but the citation to Minn. Stat. section 609.224 is consistent with that in the police report. Furthermore, although the Petitioner now submits a police narrative showing that in 2023 he requested to supplement information he had provided in 2015, the narrative does not show that the [redacted] Police Department or another law enforcement agency actually detected, investigated, or prosecuted a qualifying crime involving a weapon or any criminal activity other than misdemeanor fifth degree assault.

Considering the totality of the evidence in the record, the record indicates that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, misdemeanor assault in the fifth degree. He does not argue that the nature and elements of misdemeanor assault under Minn. Stat. section 609.224 are substantially similar to qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). Therefore, the Petitioner has not established that he was victim of felonious assault or any other qualifying crime under section 101(a)(15)(U)(iii) of the Act, and we must dismiss the appeal.

ORDER: The appeal is dismissed.