



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29463687

Date: DEC. 20, 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). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), finding the Petitioner did not establish he was the victim of a qualifying crime. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief asserting that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification.

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 remand the matter to the Director for the issuance of a new decision.

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)(1). 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

In March 2016, the Petitioner filed his U petition with a Supplement B (first Supplement B) signed and certified by a detective from the [redacted], California Police Department (certifying official). The certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other: Robbery." The certifying official cited to 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, the certifying official indicated, in Part 3, that in [redacted] 2010, "[s]uspects approached victim and told victim that he liked his phone. An altercation ensued and the suspects fled on foot." The detective stated, that the "[v]ictim sustained an approximate 1/2" cut to the right top of his head, a swollen/bruised right eye, and an approximate 1/4 " circular cut on the bottom of his chin."

The contemporaneous detailed police investigative report dated the day of the event at 4:40 a.m. accompanying the Supplement B contains a case narrative which mirrors the information in the Supplement B, but includes additional details including that the type of property stolen was a "wallet/ID" and, in the section called "use of force," includes details stating:

[Suspects] approached vict[im] from behind, susp[ect] 2 bear hugged vict[im]. Susp[ect] 1 proceeded to punch vict[im] to his face multiple times causing vict[im] to loose (sic) consciousness. Susp[ect]s removed vict[im]'s [illegible] and fled on foot in unknown direction.

In the continuation sheet of the investigative report, the investigating officer provides independent corroboration that he "received a radio call of a 'Battery investigation at [redacted] and uses the term "assault" three times in the investigative report. "Upon arrival we met with the [victim] who advised that he had been assaulted." The investigative report, in part, continues:

The [Petitioner] advised that suspect-2 approached him from behind and "bear hugged" him, trapping his arms. Suspect-1 then approached the [Petitioner] and punched him

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.

7-10 times in his face. Suspect-2 released the [Petitioner] and the [Petitioner] fell to the ground. Suspect-2 fled in an unknown direction. As the [Petitioner] was on the ground, suspect-1 continued to punch the [Petitioner] on his face several more times. The [Petitioner] advised that he lost consciousness but does not remember how long he was unconscious. Suspects 1 and 2 fled in an unknown direction. When the [Petitioner] woke up, he noticed that he was lying on the ground and that his face was bleeding.

After regaining consciousness from the assault, states the report, the Petitioner flagged down a passerby who drove him home and his family-member saw the injuries and drove him to the hospital. The record contains contemporaneous photographs of the facial injuries as well as medical records documenting a pain scale of 8, nasal fracture, head injury, lacerations to left chin and inner cheek, and swelling to his right front/right orbital (eye area). The Diagnostic Radiology Consulting Report states the “reason for exam” was stress trauma. A CT scan was taken of the maxillofacial and orbits finding “extensive right frontal and right periorbital soft tissue swelling... There is right nasal bone fracture...Impression: Extensive right frontal and parietal soft tissue swelling. Right medial orbital wall fracture, without extraocular muscle entrapment.” A CT scan of the brain found “large right frontal scalp hematoma extending to right preorbital region.” Finally, the police investigative report states that the Petitioner “noticed that his wallet which he was carrying prior to the assault in his front left pocket was missing.” The police took six digital photos, five of the Petitioner’s injuries. Two photos of the Petitioner’s facial injuries, laying in a hospital bed, are in the record.

In March 2021, in response to the Director’s request for evidence (RFE) that the Petitioner was the victim of a qualifying crime, the Petitioner submitted a second Supplement B for the same incident that occurred in [redacted] 2010, which was certified by a different detective of the [redacted], California Police Department. In Part 3 of the second Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to the qualifying crimes of felonious assault, and cited to robbery under section 211 (robbery) of the Cal. Penal Code as the specific offenses investigated or prosecuted. The same police report underlies both Supplements B.

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 a victim of a crime that is “substantially similar to qualifying crimes found within regulations.” The Director noted that robbery was the crime actually investigated and that robbery is not a qualifying crime. The Director further determined that the Petitioner had not established that the nature and elements of robbery under California law are substantially similar to a qualifying criminal activity.

On appeal, the Petitioner maintains he was the victim of robbery and felonious assault under section 245(a)(4) of the Cal. Penal Code that punishes any person “who commits an assault upon the person of another by means of any force likely to produce great bodily injury.” As explained below, we agree that the record establishes that law enforcement detected, investigated, or prosecuted felonious assault under section 245 of the Cal. Penal Code as perpetrated against the Petitioner and, accordingly, the Petitioner has established that he was the victim of qualifying criminal activity as contemplated by section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9).

B. Qualifying Criminal Activity

Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act require 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. The term “investigation or prosecution” of qualifying criminal activity “refers to 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 . . .”).

At the time of the offense against the Petitioner, the crime of assault was defined as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Ca. Penal Code § 240 (emphasis added). Section 245(a)(4) of the Cal. Penal Code punishes, as a felony, any person “who commits an assault upon the person of another by means of any force likely to produce great bodily injury.” At the time of the crime, the corresponding California Criminal Jury Instructions stated that, to prove a charge of assault with force likely to produce great bodily injury, the prosecutor must prove each of the following elements:

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

[AND]

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon other than a firearm/with a firearm/with a semiautomatic firearm/with a machine gun/with an assault weapon/with a .50 BMG rifle) to a person(;/.)

[AND]

5. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act willfully when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

Judicial Council of California Criminal Jury Instruction 875 (CALCRIM) (grammar and punctuation in original preserved). Great bodily injury is defined as “significant or substantial injury.” *People v. Brown*, 210 Cal. App. 4th 1, 7 (2012); see also Cal. Penal Code § 12011.7(f). Under California law, “serious bodily injury” under section 243(d) of the Cal. Penal Code “is the essential equivalent of ‘great bodily injury.’” *People v. Otterstein*, 189 Cal. App. 3d 1548, 1550 (1987); see also Cal. Penal Code § 243(f)(4) (defining “serious bodily injury” as “a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.”). The Cal. Jury Instr.—Crim similarly provide that “great bodily injury” refers to significant or substantial bodily injury or damage; it does not refer to trivial or insignificant injury or moderate harm. Cal. Jury Instr.—Crim. 9.02, Cal. Jury Instr.—Crim. 9.02.

As the Petitioner argues on appeal, both the Supplements B describe an altercation during a robbery that left the Petitioner with serious bodily injuries. The updated Supplement B submitted in response to the Director’s RFE specifically checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to the qualifying crime of felonious assault. Felonious assault under the California Penal Law is committed when a person, in relevant part, is charged with “an unlawful attempt, coupled with the present ability, to commit a violent injury on the person of another,” “...by any means of force likely to product great bodily injury.” Cal. Penal Code §§ 240, 245(a)(4). The contemporaneous police investigative report provided, as detected by law enforcement, that the Petitioner “had been assaulted” and described a violent encounter by two perpetrators who were not acting in self-defense and the encounter resulted in great bodily harm. The investigation noted that one suspect bear-hugged and trapped the Petitioner’s arms while the second suspect punched the Petitioner 7 to 10 times. The first suspect released the Petitioner, the Petitioner fell to ground, and the first suspect then punched the Petitioner in the face several more times. The medical report of injury was consistent with the investigative report. The police report supported the description of the violent attack, that the Petitioner was punched many times in the face, lost consciousness, and suffered injury which included a fractured nose bone and right medial orbital fracture (the medial orbital wall consists of four bones around the eye).

The record therefore establishes that law enforcement detected an assault coupled with the present ability to commit great bodily injury in the commission of the crime. The related California jury instructions for felonious assault also look to whether the suspect had the intent and ability to commit assault. As stated, the details provided in the underlying record establish that the Petitioner was robbed by suspects who violently attacked his person resulting in serious bodily injury prior to doing so. Accordingly, and based on the above, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected a felonious assault under Ca. Penal Law § 245(a)(4) as perpetrated against him. We withdraw the Director’s prior decision to the contrary.

III. CONCLUSION

The Petitioner has established that law enforcement detected, investigated, or prosecuted, and he was the victim of, a qualifying crime. We withdraw the Director's decision and remand the matter for the Director to determine whether the Petitioner has met his burden of establishing the remaining eligibility criteria for U nonimmigrant status.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.