



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

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

In Re: 29655395

Date: DEC. 21, 2023

Appeal of Vermont 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 Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner was a 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, 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 his U petition in July 2016 with a Supplement B signed and certified by a commander in the [redacted], Minnesota Police Department. The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felony Assault," "Related Crimes," and "Other: Rob of a person." The certifying official cited to sections 609.224 (Misdemeanor Assault in the Fifth Degree) and 609.24 (Simple Robbery) of the Minnesota Statute Annotated (Minn. Stat. Ann.) as the specific statutory citations investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, as well as any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner "was at his store when he noticed the suspect stuffing clothes in her blouse. The [Petitioner] confronted the suspect as she tried to leave the store and the suspect pushed the [Petitioner] and struck [sic] him on his chest in attempt to get away. The suspect then dropped the clothing and ran outside. The suspect then threw rocks at the [Petitioner]." The certifying official further noted that the Petitioner "suffers from emotional, physical, and psychological trauma as a result of the incident. The [Petitioner] also suffered from bruising and swelling of his palm and thumb from the incident."

The police report accompanying the Supplement B identified the "Primary Routed Unit" as Robbery, and recorded the offense as Fifth Degree Assault – attempt to cause bodily harm under section 609.224 of the Minn. Stat. Ann. The narrative section of the police report confirms that a police officer met with the Petitioner two days after the incident, where the Petitioner informed the officer that someone in his store attempted to shoplift two pairs of pants, and that the Petitioner attempted to stop the suspect at the door. The suspect then pushed the Petitioner, striking him in his chest, and attempted to get away. The Petitioner then attempted to go behind the counter to retrieve his mace when the suspect grabbed the Petitioner's left hand and bent his thumb backwards. The police report noted that the Petitioner's hand appeared noticeably bruised and purple on his palm and thumb. The Petitioner then stated that the suspect dropped the pants and ran outside. The Petitioner followed the suspect and began filming the suspect, after which the suspect picked up a rock and threw it at the Petitioner, nearly missing him. The report noted that the Petitioner showed the officer the video, that it was shaky, but that it captured the suspect throwing the rock and cursing at the Petitioner.

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. The Director noted that robbery was not a qualifying crime and determined that the nature and elements of robbery under Minnesota law were not substantially similar to a qualifying criminal activity. On appeal, the Petitioner again argues that he was the victim of criminal activity involving or similar to the qualifying crime of felonious assault.

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

The Act requires that U petitioners demonstrate that they “ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful” to law enforcement authorities “investigating or prosecuting [qualifying] criminal activity,” as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The requisite law enforcement certification must state, in pertinent part, that the petitioner “has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting.” 8 C.F.R. § 214.14(c)(2)(i). “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*, 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 that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. At the outset, we acknowledge the Petitioner’s contention that Simple Robbery is a serious offense as evidenced by the stiff penalties for being convicted of the offense. That alone does not establish that he was the victim of qualifying criminal activity. The Petitioner further claims that there were injuries on his hand and that he fell to the ground after the suspect injured his hand. However, although the police report indicates that the Petitioner was injured as a result of the incident, the police report only indicates that the incident was investigated for Misdemeanor Assault in the Fifth Degree under section 609.224 of the Minn. Stat. Ann., and 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 the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction.

We acknowledge that the certifying official checked the box on the Supplement B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault. However, the certifying official did not cite to or reference any felonious assault in the Supplement B. Instead, the certifying official cited sections 609.224 and 609.24 of the Minn. Stat. Ann. We acknowledge that Simple Robbery under Minnesota law is punished as a felony. *See* Minn. Stat. Ann. § 609.24 (stating

that “[w]hoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person’s resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.”). We also acknowledge that the Supplement B and police report indicate that Assault in the Fifth Degree was detected and investigated, which is a misdemeanor. *See* Minn. Stat. Ann. § 609.224 (stating that “[w]hoever does any of the following commits an assault and is guilty of a misdemeanor: (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another.”). Under Minnesota law, assault in the fifth degree may only become a felony if the perpetrator has previously violated the provisions of subdivision (1) mentioned above against the same victim. *Id.*

However, contrary to the Petitioner’s arguments on appeal, although Simple Robbery is a felony in Minnesota, this does not establish that law enforcement detected, investigated, or prosecuted, and he was the victim of, the qualifying crime of felonious assault. Moreover, the Supplement B, when read as a whole and in conjunction with the 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”)

Beyond the checked boxes to felonious assault described above, the certifying official did not reference the crime of felonious assault as perpetrated against the Petitioner elsewhere in the Supplement B. The accompanying police report, produced shortly after the criminal activity occurred, did not identify any type of felonious assault; instead, it identified the offense committed as Assault in the Fifth Degree under section 609.224 of the Minn. Stat. Ann. The narrative section of the police report likewise did not reference any felonious assault under Minnesota law. As a result, and as outlined in the Director’s decision, the Supplement B’s checked box to felonious assault is inconsistent with the information outlined in the remainder of the documents and with the police report, which served as the basis for the certification of the Supplement B. The Petitioner has not concretely addressed or submitted any additional evidence or otherwise established that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against him after initially classifying and describing the offense as Assault in the Fifth Degree. 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 crime of felonious assault, 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 Robbery and Misdemeanor Assault in the Fifth Degree under Minnesota law.

C. Assault in the Fifth Degree or Simple Robbery under Minnesota Law Are Not Substantially Similar to the Qualifying Crime of Felonious Assault

As noted by the Director, robbery is not a qualifying crime included in section 101(a)(15)(U)(iii) of the Act. Nonetheless, the Petitioner asserts that Simple Robbery under section 609.24 of the Minn. Stat. Ann. is substantially similar to the qualifying crime of felonious assault. The Act provides that “any similar activity” to the qualifying crimes may also be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. However, the regulations explicitly define the term “any similar activity” as “offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of qualifying criminal activities.” 8 C.F.R. § 214.14(a)(9); *see also* Interim Rule, 72 Fed. Reg. at 53018 (stating that the definition of “any similar activity” was needed because, and “base[d] . . . on[,] the fact that the statutory list of criminal activity is not composed of specific statutory violations.”).

On appeal, the Petitioner argues that Simple Robbery is substantially similar to felonious assault, as “all Minnesota robberies are similar to the listed crime of “felonious assault,” in that all Minnesota robberies are felonies and the include the use, or threatened use, of force, the quintessential element of assault as an element of the offense.” However, felonious assault in Minnesota involves an assault with substantial bodily harm. We acknowledge that Simple Robbery under section 609.24 of the Minn. Stat. Ann. is a felony offense. However, Simple Robbery is otherwise distinct in its elements from Minnesota’s equivalents to the qualifying crime of felonious assault. As noted above, Simple Robbery requires a taking of personal property as a required element of the offense, which is not required under any of Minnesota’s felonious assault provisions. Also, unlike the felonious assault provisions, Simple Robbery does not require the use of a weapon, force likely to produce great bodily injury, or any other aggravating circumstance. Further, as we have discussed above, Misdemeanor Assault in the Fifth Degree under section 609.224 of the Minn. Stat. Ann. only rises to a felony if the perpetrator has previously violated the Assault in the Fifth Degree provisions against the same victim, and as such, is not similar to any felonious assault under Minnesota law. Based on the foregoing, the Petitioner has not established that the nature and elements of robbery are substantially similar to a felonious assault under Minnesota law.

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.