



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

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

In Re: 29739149

Date: DEC. 21, 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 Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the record did not establish, as required, the Petitioner's helpfulness to law enforcement in the investigation or prosecution of qualified 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.

To establish eligibility for U 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 helpfulness requirement includes demonstrating that, since initiating cooperation, the petitioner has not refused or failed to provide information and assistance reasonably requested. 8 C.F.R. § 214.14(b)(3).

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 that the petitioner possesses information concerning the qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of it.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Although petitioners may submit any relevant, credible evidence for the agency to consider, U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

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 Petitioner filed his Form I-918 in 2017 with a Supplement B signed and certified by a sergeant in the [redacted] Police Department (certifying official) in [redacted], Arizona based on criminal activity that occurred in 2015. The certifying official checked the box for "Other" in Part 3.1, adding that the Petitioner was the victim of criminal activity involving or similar to "Aggravated Robbery." The certifying official identified section 13-1903 of the Arizona Revised Statutes (Ariz. Rev. Stat.), corresponding to aggravated robbery, as the specific statutory citation for the criminal activity investigated or prosecuted, and when asked to describe the criminal activity being investigated stated that "Aggravated Robbery was committed in the course of taking the [Petitioner's] wallet and cash." When asked to describe any known or documented injury to the Petitioner, the certifying official stated that the Petitioner "sustained a small cut above his left eye." In part 4 of the Supplement B, the certifying official checked three boxes indicating that the Petitioner has been, was being, or was likely to be helpful in the investigation or prosecution of the criminal activity cited in the form; that he has been requested to provide further assistance; and that he had not unreasonably refused to provide such assistance. As further explanation for the answers reflected in these checked boxes, the certifying official stated that the Petitioner had cooperated with investigators. The certifying official, however, also added an excerpt from a police report indicating that on December 3, 2015, a detective attempted to contact the Petitioner via telephone but that the telephone number was the incorrect and directed the detective to the voicemail of a real estate agent. The excerpt continued, adding that the detective next attempted to contact the Petitioner at a different number but that there was no answer or ability to leave a message.

In support of his Form I-918, the Petitioner also submitted a copy of the police report associated with the criminal activity. The report described that the Petitioner was the victim of an aggravated robbery in [redacted] 2015, that he provided information to the responding police officers, and that he then was transported to his house. The report added that approximately two days after the robbery an officer in the [redacted] Police Department responded to a telephone call from the Petitioner who believed he could identify one of the suspects. The report also described three unsuccessful attempts to contact the Petitioner, including: on December 3, 2015, when a detective attempted to contact the Petitioner by telephone but, as noted in the Supplement B, was unsuccessful as the mobile telephone number provided was incorrect and directed the detective to an incorrect voicemail; on December 7, 2015, when the detective attempted to contact the Petitioner at his home telephone number and was directed to voicemail where he left a message; and finally on December 7, 2015, when the detective completed a postcard that was mailed to the Petitioner's address and requested that the Petitioner contact him. The report concluded by stating the "case will be pended until suspect leads are developed or the [detective] has contact with the victim." The record includes a copy of a postcard that is date-stamped on December 9, 2015, and which provided the detective's name, address, and phone number and requested that the Petitioner contact him as soon as possible. There is no indication in the police report that the Petitioner ever responded to the postcard and contacted the detective.

The Petitioner also provided a statement in which he claimed he was beaten for approximately 10 minutes, including being kicked in the ribs and hit with a baseball bat. He added that he was assigned a detective but did not have communication with him because the detective's phone number was a private number. He continued that he recalled the police "only made a call to request reports of what happened and [to] give references of the people who attacked [him]." He also claimed that because of his injuries, he could not get out of bed for several days and was unable to leave his house for more than two months due to fear and trauma.

As noted above, the Director denied the Form I-918, concluding that while the Petitioner was helpful at the outset of the investigation, he stopped being helpful and failed to provide assistance to law enforcement in the continuing investigation or prosecution of the case and was therefore ineligible for U nonimmigrant classification.

On appeal, the Petitioner provides an additional statement wherein he claims he “only receive[d] one missed call leaving a voice mail that said to communicate with [the detective],” and that he was “insistent in calling the number of the detective,” but did not have “success... communicating with him.”² The Petitioner claims that while it was reasonable for the detective to request that the Petitioner return his call, it was unreasonable that the detective failed to follow up with him or respond to this calls and voice messages, which made it virtually impossible for him to provide further assistance, and therefore, contrary to the Director’s finding, he did not refuse or fail to provide information and assistance reasonably requested.

Those seeking U nonimmigrant classification may establish their helpfulness at different stages of the investigation or prosecution. *See* Section 101(a)(15)(U)(i)(III) of the Act (requiring a petitioner to establish she “has been helpful, is being helpful, or is likely to be helpful”). The record establishes that when the Petitioner contacted the [redacted] Police Department, he provided information about his assailants and later contacted the police in order to identify a potential suspect. Thus, the record establishes that the Petitioner had been helpful to law enforcement at the outset of the investigation.

As noted above, however, to satisfy the helpfulness requirement, the Petitioner must also establish that since the initiation of cooperation, he has not refused or failed to provide information and assistance reasonably requested of him. 8 C.F.R. § 214.14(b)(3). We acknowledge that the certifying official indicated in the Supplement B that the Petitioner had not unreasonably refused to provide assistance. However, the Supplement B is not conclusory evidence of the Petitioner’s helpfulness, and as noted above, we determine, in our sole discretion, the weight to give to the Supplement B. *See* 8 C.F.R. § 214.14(c)(4). Here, the record shows that subsequent to the Petitioner’s initial cooperation and assistance, a detective in the certifying agency was assigned to his case and attempted to contact the Petitioner by phone and mail to request his continuing assistance in the investigation and prosecution without success, and the Petitioner does not contest that these requests for assistance were reasonable. The record does not reflect, and the Petitioner does not claim, that the detective used phone numbers or an address that were different than what the Petitioner provided. And additionally, the Petitioner acknowledges he received a voicemail from the detective, and while he claims he attempted to call him in response and that it was unreasonable for the detective to fail to follow up with him, the police report does not indicate that he ever attempted to follow up on the status of the investigation. Other than claiming he was “insistent” in trying to reach the detective, the Petitioner does not provide further

² Counsel for the Petitioner asserts on appeal that the Petitioner attempted to return the detective’s calls multiple times and left voicemails providing his contact information. However, unsubstantiated assertions of counsel do not constitute evidence. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (explaining that statements in a brief, motion, or notice of appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (noting that statements or assertions by counsel are not evidence). Here, contrary to counsel’s assertions, although the Petitioner’s brief updated statement on appeal indicates that he was “insistent in calling” the detective, he states only that he was unsuccessful at reaching the detective but does not otherwise indicate that he left voice messages for the detective or provide any further details regarding his attempts to contact him.

details about his attempts and does not address whether he ever attempted to contact the detective in response to the postcard that was mailed to him after the detective's voicemail.³ It is likewise unclear whether he alternatively attempted to contact the main [redacted] Police Department when he was unable to reach the detective directly, especially given the record reflects that the Petitioner was able to contact the [redacted] Police Department approximately two days after the date of the criminal activity to potentially identify a suspect and that they were responsive to his call.⁴

Thus, while we acknowledge the Petitioner's claim that he attempted to respond to the detective, when considering the overall record, including the police report and the Supplement B that incorporated portions of police report, the Petitioner has not established by a preponderance that he has not refused or failed to provide to provide reasonably requested information and assistance after he initiated cooperation. As the Petitioner has not demonstrated that he satisfies the helpfulness requirement, he has not established his eligibility for U nonimmigrant classification.

ORDER: The appeal is dismissed.

³ The Petitioner does not address whether he received the postcard, but he does not deny receiving it and the fact that he includes it as evidence in this case indicates that he did indeed receive it.

⁴ Contrary to his written statement before the Director indicating that he could not leave his bed due to injuries from the aggravated robbery and did not leave his house due to fear and trauma for about two months, the police report reflected that the Petitioner contacted the police two days after the criminal incident and was able to accompany a police officer to identify a possible suspect.