



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

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

In Re: 23133574

Date: JAN. 5, 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 he was the victim of qualifying criminal activity and therefore he did not meet any of the remaining eligibility requirements for U-1 nonimmigrant classification. 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, have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity, and that the qualifying criminal activity occurred in the United States or its territories or possessions. 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 the 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. 8 C.F.R. § 214.14(c)(4). A petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B must be signed by the certifying official within the six months immediately preceding the filing of the U petition. 8 C.F.R. § 214.14(c)(2)(i). Although a petitioner may submit any relevant, credible evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in August 2016 with a Supplement B signed and certified in May 2016 by a commander in the [REDACTED] Police Department in [REDACTED] Minnesota (certifying official). In Part 3.1 of the Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Related Crimes," and typed in "Aggravated Robbery" next to the box marked "Other." In Part 3.3, the certifying official listed sections 609.245 (aggravated robbery) and 609.224 (misdemeanor assault in the fifth degree) of the Minnesota Statutes (Minn. Stat. Ann.) as the specific statutory citations investigated or prosecuted. The certifying official also listed but crossed out Minn. Stat. Ann. § 609.222 (felony assault in the second degree). When describing the criminal activity being investigated or prosecuted, the certifying official provided that the Petitioner was robbed, and the suspect punched him repeatedly in the head causing a bruise on his face. Where asked to describe any known injury to the Petitioner, the certifying official stated he "had a bruise on his face." In addition, the Petitioner provided a [REDACTED] Police Department case report (case report) which described the incident as "Robbery of Person" and listed Minn. Stat. Ann. § 609.24, the statutory provision for simple robbery.

In response to the Director's request for evidence (RFE), the Petitioner submitted a second Supplement B signed and certified in September 2021 by a different commander in the [REDACTED] Police Department (second certifying official). In Part 3.1 of the second Supplement B, the second certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." In Part 3.3, the second certifying official listed the statutory sections for aggravated robbery, misdemeanor assault in the fifth degree, and felony assault in the second degree as the specific statutory citations investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, the second certifying official indicated that the Petitioner was punched repeatedly in the head and under Minnesota law fists can qualify as dangerous weapons. The Director denied the U petition, concluding that the Petitioner did not establish that he was the victim of qualifying criminal activity.

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

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*, 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 asserts that the evidence in the record is sufficient to establish that law enforcement detected, investigated, or prosecuted, and he was the victim of, the qualifying crime of felonious assault. While the first Supplement B provides that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault,” neither it nor the case report references a Minnesota felony assault statute. The first Supplement B reflects that the criminal activity investigated or prosecuted was aggravated robbery under Minn. Stat. Ann. § 609.25 and misdemeanor assault in the fifth degree under Minn. Stat. Ann. § 609.224. Furthermore, the case report indicates that simple robbery under Minn. Stat. Ann. § 609.24 was investigated. We also note that the certifying official crossed out the citation to felony assault in the second degree under Minn. Stat. Ann. § 609.222. We acknowledge that Part 3 of the second Supplement B mentions that the Petitioner was the victim of felonious assault and references felony assault in the second degree under Minn. Stat. Ann. § 609.222 as the criminal activity investigated or prosecuted. However, the second Supplement B was certified approximately 6 years after the crime occurred and more than five years after certification of the first Supplement B. It is not accompanied by a statement from the second certifying official or any other evidence explaining the reasons behind the additional statutory citation for felony assault in the second degree, or why the certifying official crossed it out on the first Supplement B and it was not crossed out on the second Supplement B.

Next, the Petitioner asserts that he was the victim of felony assault in the second degree under Minn. Stat. Ann. § 609.222 based on the facts of his case and relevant Minnesota law. At the outset, we note that evidence describing what may appear to be, or hypothetically could have been investigated or charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner’s eligibility absent evidence indicating, by a preponderance of the evidence, that relevant law enforcement authorities in fact 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)(2), (a)(9), (b)(3). While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by law enforcement as perpetrated against the petitioner. *See id.*

Nonetheless, even considering Minnesota case law, the Petitioner has not established that he was the victim of felony assault in the second degree under Minn. Stat. Ann. § 609.222. Minn. Stat. Ann. § 609.222(1) provides “[w]hoever assaults another with a dangerous weapon...” and Minn. Stat. Ann. § 609.222(2) provides “[w]hoever assaults another with a dangerous weapon and inflicts substantial bodily harm...” as the requirements for the two types of felony assault in the second degree under Minnesota law. The record reflects that the Petitioner was punched in the head and he asserts that the definition of dangerous weapon includes a fist. Minn. Stat. Ann. § 609.02(6) defines dangerous weapon as “any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.” In support of the Petitioner’s claim, he cites *State v. Born*, 280 Minn. 159 N.W.2d 283, 285 (1968) (finding a fist may be a dangerous weapon where assault perpetrated was likely to produce a protracted impairment of the functions of the members or organs of the individual). In addressing the definition of dangerous weapon, the court suggested that something more than “a mere injury by fist, such as is likely to occur in ordinary assault and battery” is needed. *Id.* at 284 (quoting *State v. Peters*, 143 N.W.2d 832, 837 (1966)). In a subsequent case where a felony assault in the second degree conviction was overturned, the court stated that “the circumstances in which Minnesota courts have found that a defendant’s hands or feet constitute a dangerous weapon have involved particularly brutal and prolonged attacks against vulnerable and sometimes defenseless victims.” *State v. Basting*, 572 N.W.2d 281, 284 (1997). In that case, the defendant struck the victim twice, the victim suffered a broken nose and cut on his face, and the victim’s injuries did not require extensive hospitalization nor was he rendered incapacitated. *Id.* at 284-285. Based on the foregoing, giving due consideration to the facts of the Petitioner’s case and relevant Minnesota law, the record does not establish that he was the victim of felony assault in the second degree under Minn. Stat. Ann. § 609.222.

The Petitioner bears the burden of establishing eligibility, including that he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement, and 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). In this case, the Petitioner has not established by the preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against him. Instead, the record reflects that law enforcement detected misdemeanor assault in the fifth degree, simple robbery, and aggravated robbery as perpetrated against the Petitioner.

C. The Offenses Detected and Investigated Are Not Substantially Similar to Felonious Assault

In order to establish “any similar activity” to one of the enumerated crimes, the record must demonstrate that the nature and elements of the offense(s) investigated are substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). However, while one need not show that the offenses are “identical,” the record must establish that both the nature *and* elements of the offenses are substantially similar. The fact that the offenses detected and investigated are also felonies and carry a greater penalty is insufficient to demonstrate substantial similarity between the offenses.

Here, the Petitioner has not established by a preponderance of the evidence that the crimes the certifying agency detected and investigated, misdemeanor assault in the fifth degree, simple robbery, and aggravated robbery, are substantially similar to felonious assault under Minnesota law. Misdemeanor assault in the fifth degree requires that a person commit “an act with intent to cause fear in another of immediate bodily harm or death,” or “intentionally inflict or attempt to inflict bodily harm upon another.” Minn. Stat. Ann. § 609.224. The presence of an additional aggravating factor renders assault a felonious offense in Minnesota. A person commits felony assault in the second degree if he or she “assaults another with a dangerous weapon” or “assaults another with a dangerous weapon and inflicts substantial bodily harm.” Minn. Stat. Ann. § 609.222. Felony assault in the third degree requires that the perpetrator inflict “substantial bodily harm.” Minn. Stat. Ann. § 609.223(1). Therefore, misdemeanor assault in the fifth degree under Minn. Stat. Ann. § 609.224 is not substantially similar to felonious assault.

The crime of simple robbery in Minnesota requires that the defendant take personal property and use or threaten the imminent use of force against another person to overcome resistance or compel acquiescence in the taking or carrying away of property. Minn. Stat. Ann. § 609.24. However, simple robbery does not require, as an element of the offense, any of the aggravating factors necessary to render an assault a felony under Minn. Stat. Ann. § 609.222 or Minn. Stat. Ann. § 609.223(1), such as the use of a dangerous weapon to commit the assault, the infliction of substantial bodily harm during the assault, or both. Therefore, simple robbery under Minn. Stat. Ann. § 609.24 is not substantially similar to felonious assault.

Next, the record does not establish that aggravated robbery under Minn. Stat. Ann. § 609.245(1) is substantially similar to felonious assault. Minn. Stat. Ann. § 609.245(1) provides, in pertinent part, “[w]hoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree . . .”

The statute for aggravated robbery with a dangerous weapon requires only that the perpetrator either have been armed with a dangerous weapon or something made to appear as a dangerous weapon to the victim during the commission of a robbery, but it does not require that an assault is committed with a dangerous weapon during the commission of the robbery. In contrast, felony assault in the second degree under Minn. Stat. Ann. § 609.222 requires the actual commission of an assault with a dangerous weapon.

Aggravated robbery without a dangerous weapon under Minn. Stat. Ann. § 609.245(1) is not substantially similar to felonious assault. Aggravated robbery without a dangerous weapon occurs where the perpetrator commits an assault by inflicting “bodily harm” upon another during the commission of the robbery. Minn. Stat. Ann. § 609.245(1). However, felony assault in the third degree under Minn. Stat. Ann. § 609.223(1) requires the infliction of substantial bodily harm. “Substantial bodily harm” requires physical injury that is more severe than the “physical pain or injury, illness, or impairment of physical condition” required for “bodily harm.” Minn. Stat. Ann. § 609.02(7), (7a).

Lastly, aggravated robbery under Minn. Stat. Ann. § 609.245(2), which provides in pertinent part “[w]hoever, while committing a robbery, implies, by word or act, possession of a dangerous weapon,

is guilty of aggravated robbery in the second degree,” is not substantially similar to felonious assault. The statute only requires that the perpetrator imply that they are in possession of a dangerous weapon while carrying out the robbery, but it does not require actual possession or use of a dangerous weapon to commit an assault or the infliction of substantial bodily harm.

Accordingly, the Petitioner has not established that the crimes the certifying agency detected and investigated are substantially similar to 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 a petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that he was the victim of qualifying criminal activity, he cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not met his burden of proof to establish, by a preponderance of the evidence, that he was the victim of qualifying criminal activity. Accordingly, he has not established eligibility for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.