



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

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

In Re: 24483951

Date: JAN. 20, 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 that the Petitioner was a victim of qualifying criminal activity, or a crime substantially similar to a qualifying criminal activity. The matter is now before us on appeal. 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 term "investigation or prosecution" of a 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).

"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). When a certified offense is not a qualifying criminal activity specifically listed under section 101(a)(15)(U)(iii) of the Act, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. 8 C.F.R. § 214.14(a)(9). Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction's statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. *Id.*

One qualifying crime under section 101(a)(15)(U)(iii), “felonious assault,” must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying “felonious assault” when committed “in violation of Federal, State or local criminal law” as a qualifying criminal activity).

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.

The Petitioner filed his Form I-918 with a Form 1-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), in 2017 seeking U nonimmigrant classification based on having been the victim of common law robbery under section 14-87.1 of the North Carolina General Statutes Annotated (N.C. Gen. Stat. Ann.). The Petitioner submitted two updated Supplements B in response to a request for evidence to correct a deficiency in the initial Supplement B. The Director denied the Form I-918 after concluding the Petitioner was the victim of common law robbery under section 14-87.1 of the N.C. Gen. Stat. Ann., which was not one of the crimes listed in section 101(a)(15)(U)(iii) of the Act, that common law robbery was not substantially similar to a felonious assault under section 14-32.4 of the N.C. Gen. Stat. Ann., and that felonious assault was not otherwise detected or investigated during the commission of the robbery.

On appeal, the Petitioner claims she was assaulted pursuant to 25 C.F.R. § 11.400(a)(1) during the commission of a felony offense. The Petitioner also asserts that the Director erred by determining that common law robbery was not substantially similar to a felonious assault in North Carolina.

At the outset, while we recognize that qualifying criminal activity may occur during the commission of non-qualifying activity, a review of the evidence establishes that law enforcement detected, investigated, or prosecuted common law robbery under North Carolina law as committed against the Petitioner and not an assault as defined at 25 C.F.R. § 11.400(a)(1). It is notable that jurisdiction for enforcement of 25 C.F.R. § 11.400(a)(1) is limited to the Courts of Indian Offenses in areas where tribes retain jurisdiction, whereas the criminal activity in this case occurred in North Carolina under state jurisdiction. *See* 25 C.F.R. § 11.114. Moreover, the Supplements B submitted by the Petitioner reference exclusively section 14-87.1 of the N.C. Gen. Stat. Ann. as the crime that was investigated or prosecuted, and none of the Supplements B or any law enforcement record provided by the Petitioner refer to 25 C.F.R. § 11.400(a)(1). Even if an assault under 25 C.F.R. § 11.400(a)(1) was detected or investigated, a “felonious assault” must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred, distinct from a misdemeanor assault committed during the course of another felony. Because an assault under 25 C.F.R. § 11.400(a)(1) is punished as a misdemeanor or petty misdemeanor, any detection or investigation of an assault under this section of law is insufficient to establish that law enforcement detected or investigated a “felonious assault” committed during the robbery. *See* 25 C.F.R. § 11.400(b).

Turning to the Petitioner’s claim that the Director erred by determining that common law robbery was not substantially similar to a felonious assault in North Carolina, we note that the Petitioner does not contest the Director’s determination that she was the victim of common law robbery under section

14-87.1 of the N.C. Stat. Ann. or that this is not a crime listed in section 101(a)(15)(U)(iii) of the Act. Thus, because common law robbery is not a qualifying criminal activity specifically listed in the Act, the Petitioner must establish that it otherwise involves a qualifying criminal activity, or that its nature and elements are substantially similar to a federal, state, or local jurisdiction's statutory equivalent to a qualifying criminal activity.

The Director cited to sections 14-32 and 14-32.4 of the N.C. Gen. Stat. Ann. to determine whether common law robbery was substantially similar to a felonious assault in North Carolina. We note that North Carolina courts have held that common law robbery involves the "non-consensual taking of money or personal property from the person or presence of another by means of violence or fear" with an intent to "deprive the owner of [their] property permanently." *State v. Moss*, 418 S.E. 2d 213, 217 (N.C. 1992). Assault in North Carolina involves either "an overt act or an attempt...with force and violence, to do some immediate physical injury to...another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm," or a "show of violence accompanied by reasonable apprehension of immediate bodily harm or injury on the part of the person assailed which causes him to engage in a course of conduct which he would not otherwise have followed." *State v. Roberts*, 155 S.E.2d 303, 305 (N.C. 1967). Simple assault is punished as a misdemeanor in North Carolina. N.C. Gen. Stat. § 14-33. To rise to the level of a felony, however, sections 14-32 and 14-32.4 of the N.C. Gen. Stat. Ann. require not only an assault, but some aggravating factor such as the use of a deadly weapon or the infliction of "serious bodily injury." The nature and elements of common law robbery involve the taking of money or personal property and do not require the use of a weapon or infliction of injury. The nature and elements of sections 14-32 and 14-32.4 of the N.C. Gen. Stat. Ann. by comparison, involve the use of a weapon or infliction of injury and do not necessarily involve the taking of money or personal property. The nature and elements of common law robbery are therefore distinct from those of felony-level assault under sections 14-32 and 14-32.4 of the N.C. Gen. Stat. Ann. The Petitioner does not propose that common law assault is substantially similar to any other section of law. Accordingly, the Petitioner has not established that she was the victim of a crime substantially similar to a qualifying criminal activity.

U nonimmigrant 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. Because the Petitioner has not established that she was the victim of a qualifying criminal activity or a crime substantially similar to a qualifying criminal activity, she necessarily cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.

The Petitioner has not established that she was the victim of qualifying criminal activity, or a crime involving or substantially similar to a qualifying criminal activity. Accordingly, the Petitioner is not eligible for U nonimmigrant status.

ORDER: The appeal is dismissed.