



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

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

In Re: 16923213

Date: JAN. 24, 2023

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant

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 (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and asserts that she is eligible for U nonimmigrant status. 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

The U-1 classification affords nonimmigrant status to victims of qualifying criminal activity who suffer substantial physical or mental abuse as a result of the crime. Section 101(a)(15)(U)(i) of the Act. To be eligible for U-1 nonimmigrant status, the petitioner must also possess information about the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of the crime. *Id.*

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. 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 September 2015, the Petitioner filed the instant U petition with a Supplement B¹ signed and certified by the Commander (of) Violent Crimes of the [REDACTED] Police Department, as well as other documentation. The Supplement B indicated that Simple Robbery under Minnesota Statute Annotated (Minn. Stat. Ann.) section 609.24 was the criminal activity being investigated, but the certifying official checked the box for felonious assault. In October 2019, the Director issued a request for evidence (RFE). In response to the RFE, the Petitioner submitted a letter from her attorney arguing that the Petitioner was a victim of Assault in the Third Degree under Minn. Stat. Ann. § 609.223 which she claims is similar to felonious assault, although the sole criminal activity that was certified was Simple Robbery; a newly executed Supplement B signed and certified by the Commander (of) Special Crimes Investigation indicating that the criminal activity being investigated was Simple Robbery under section 609.24 of the Minn. Stat. Ann.; a copy of her marriage certificate; and separate statements from the Petitioner and her spouse. The newly executed Supplement B left blank the sections requiring a description of the criminal activity being investigated or prosecuted, and a description of any known or documented injury to the Petitioner. Under the section titled “helpfulness,” the certifying official wrote “Victim reported crime and cooperated with police.” According to the police report, the Petitioner was standing at a bus stop when 2 or 3 individuals approached her. The Petitioner was pushed, her purse was yanked away from her, and the individuals fled.

In March 2020, the Director denied the U petition concluding that the Petitioner did not establish, as required, that she 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 she 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.

¹ This initial Supplement B was insufficient because it was not signed within six months prior to its submission to USCIS.

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 her burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. 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 she was the victim of qualifying criminal activity. The Petitioner further claims that there were injuries on her arm and that she suffered pain in her back and buttocks when “her purse was grabbed,” and she was pushed to the ground. She speculates that she could have sustained a head injury. However, the police report does not indicate that the Petitioner was injured as a result of the incident, 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. Lastly, the Petitioner argues that law enforcement “erred in putting simple robbery on the police report.” However, we note that both Supplements B, completed nearly five years apart, consistently listed Simple Robbery.²

We acknowledge that the certifying official checked 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 section 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.”). 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 she 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”)

² The Petitioner also claims there is a similar case (and lists the confidential receipt notice number for another petitioner) and alleges that we determined that Simple Robbery was similar to felonious assault. However, non-precedent decisions are not published as a precedent and therefore do not bind us or USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case; and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

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 strong-arm robbery under section 609.24 of the Minn. Stat. Ann. The narrative section of the police report likewise did not reference any assault under Minnesota law as it was left blank. 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 relevant to these inconsistencies or otherwise establishing that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against her after initially classifying and describing the offense as a robbery. The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she 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 her. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and she was the victim of Simple Robbery under Minnesota law.

C. Simple Robbery under Minnesota Law is 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, and that based on the circumstances, the incident could be considered Assault in the Third Degree under Minn. Stat. Ann. § 609.233. We note that Minn. Stat. Ann. § 609.223 provides, "[w]hoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000 or both." 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. 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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.