



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

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

In Re: 21518570

Date: APR. 6, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity 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 Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal. On appeal, the Petitioner submits a statement and asserts his eligibility for U nonimmigrant status. We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, the matter will be remanded to the Director for further proceedings consistent with our decision here.

**I. LAW**

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and petitioners bear the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; 8 C.F.R. § 214.14(c)(1), (4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their

helpfulness in the investigation or prosecution of the qualifying criminal activity.<sup>1</sup> Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of 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 Evidence and Procedural History

The Petitioner filed his U petition in May 2016 with a Supplement B signed by a Commander at the Kentucky State Police – [redacted] in [redacted] Kentucky (certifying official) regarding an incident the Petitioner experienced in [redacted] 2015. In the Supplement B, the certifying official checked boxes in Part 3.1 indicating that the Petitioner was a victim of activity involving or similar to “felonious assault,” “other: robbery, 1st degree,” “attempt to commit any of the named crimes” and “conspiracy to commit any of the named crimes.” In Part 3.3, the certifying official did not identify a statutory citation for the criminal activity investigated or prosecuted as perpetrated against the Petitioner. In describing the criminal activity, the certifying official indicated that two men, one with a knife and one with a handgun, robbed the store where the Petitioner was working. The perpetrator with the knife “waved” it at the Petitioner, cutting his arms and hands, and took the money from the register, as well as video recordings. One of perpetrators also hit the Petitioner’s spouse with the gun and dragged her by her hair. In describing any known or documented injury to the Petitioner, the certifying official, who signed the Supplement B in December 2015, further indicated that the Petitioner continued to suffer from anxiety and sleepless nights.

The police report, submitted with the Petitioner’s U petition, listed the crime as first degree robbery, citing section 515.020 of the Kentucky Revised Statutes Annotated (Ky. Rev. Stat. Ann.) corresponding to that offense, and set forth an account of the criminal activity consistent with that in the Supplement B. According to the report, the Petitioner was working at a tobacco store and, along with his spouse, was assaulted by two armed, masked perpetrators who entered the store and stole money and a digital video recorder. During the course of the robbery, one perpetrator pointed a pistol at the Petitioner and the other with a knife shoved him into a wall. The report indicated that, while the perpetrator with the knife took the Petitioner to the office after taking the money from the cash registers and while removing the video recorder there, he “was slashing” at the Petitioner to keep the Petitioner away from him, resulting in a laceration on the Petitioner’s left hand from the knife. During the encounter, one of the perpetrators grabbed the Petitioner’s spouse by her hair and she was also hit in the head with a gun, knocking her to the ground. Prior to fleeing, the perpetrators told the Petitioner to lay on the ground and not get up or they would kill the Petitioner and his spouse. The Petitioner reported that after the perpetrators left, he remained on the ground for a few minutes and then got up to check on his spouse before calling the police. The Petitioner’s statement attached to the police

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<sup>1</sup> The Supplement B 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.

report provided a consistent account and indicated that he reported that he was still feeling scared and jumpy. The report characterized the Petitioner's cut on his hand as an "apparent minor injury." Finally, the Petitioner's handwritten statement accompanying the police report similarly described these events.

In a personal statement submitted with his U petition, the Petitioner described the incident consistently with the Supplement B and police report. The Petitioner further detailed feeling afraid that the perpetrator would become angry and shoot him, or do so accidentally, during the robbery. He expressed concern for what would have happened to his young children if he had died. The Petitioner stated that he could not sleep the whole night, nor eat or drink, and he prayed to be kept safe. In response to a Notice of Intent to Deny issued by the Director, the Petitioner submitted an additional statement asserting that he had suffered immense emotional trauma as a result of the incident, which he described as a horrifying situation that had significantly impacted his life and family. He stated that he was still not able to relax, that he was always nervous and depressed, and suffered from insomnia and paranoia. The Petitioner also attributed his depression to not being able to protect his spouse from being grabbed and hit during the crime. Further, the Petitioner indicated that his medical treatment after the crime consisted of tetanus and diphtheria toxoids to prevent infection.

The Petitioner also submitted medical records, including a letter from the attending physician who treated the Petitioner, which confirm the above-noted treatment and state that it was administered "due to the depth" of the Petitioner's incision resulting from an assault. The records from the hospital from the day of the crime indicate that the Petitioner's wound was cleaned and bandaged. Further, the record contains a mental health evaluation conducted in June 2021 with a consistent account of the criminal incident as recounted by the Petitioner with additional details. According to the evaluation, the Petitioner also indicated that he had raised his hands to protect himself prior to the perpetrator cutting his left hand. The evaluation further detailed that perpetrator told the Petitioner to "behave" or he would kill him. When ordering the Petitioner and his spouse to lay on the floor, the perpetrators told them to remain there until the perpetrators were gone or they would come back to kill him. The Petitioner indicated he told the police who came to the store that he felt "scared and jumpy." According to the evaluation, he eventually left his job to work at a different store, but still felt afraid and asked a friend to accompany him or someone to stay with him if he was there after dark. He had nightmares, difficulty sleeping, and feared he could be assaulted again. The Petitioner expressed feeling anxious, nervous, irritable, fearful, and unable to relax. The evaluation diagnosed the Petitioner with post-traumatic stress disorder (PTSD) and recommended that the Petitioner would benefit from ongoing psychotherapy, in addition to indicating that the Petitioner was experiencing some symptoms of moderate anxiety and severe depression. Finally, the record also contains an assessment resulting from appointments in June and August 2015 describing similar symptoms, as well as a partly illegible hand-written psychiatric evaluation from June 2015.

The Director denied the U petition, finding that the Petitioner had not met his burden of establishing that he was the victim of qualifying criminal activity, and therefore, he necessarily did not establish the remaining eligibility criteria for U nonimmigrant status. The Director further concluded that the Petitioner had also not demonstrated that he suffered substantial physical or mental abuse as the result of having been the victim of such a crime.

## B. The Petitioner Is a Victim of the Qualifying Crime of Felonious Assault

On appeal, the Petitioner asserts that he was the victim of the qualifying crime of felonious assault based on the factual circumstances of the crime, specifically that the perpetrators slashed his hand with a knife in the course of committing a robbery.<sup>2</sup>

U petitioners must establish that the certifying agency detected, investigated, or prosecuted qualifying criminal activity as perpetrated against them, and the record as a whole must support the certification of that victimization in order to establish a petitioner's eligibility for U nonimmigrant status. Section 214(p)(1), (4) of the Act; 8 C.F.R. § 214.14(c)(2)(ii), (4). "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). A U petitioner must further establish that he or she was, in fact, a victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act (requiring substantial physical or mental abuse as a result of having been "a victim of [qualifying] criminal activity"); 8 C.F.R. §§ 214.14(a)(14) (defining "victim of qualifying criminal activity"), (b)(1) (reiterating the requirement of suffering "substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity"), (c)(2)(ii)-(iii) (requiring evidence to establish that "the petitioner is a victim of qualifying criminal activity" and a "signed statement by the petitioner describing the facts of victimization"). Accordingly, we consider whether the preponderance of all the relevant, credible evidence shows that the certifying agency detected, investigated, or prosecuted qualifying criminal activity as having been committed against the petitioner and that the petitioner was in fact a victim of the offense.

The Supplement B is required evidence which informs, but does not solely determine, whether a U petitioner is a victim of qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i)-(ii), (c)(4). Part 3.1 of the Supplement B asks the certifying official to verify that "[t]he petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity)[,]" and then provides check boxes corresponding to the 28 qualifying criminal activities provided for in section 101(a)(15)(U)(iii) of the Act. Part 3.3 then asks the certifying official to list the specific statutory citation for the criminal activity the certifying agency "investigated or prosecuted." USCIS reviews the specific statutory citation in Part 3.3 to discern whether it "is that involving ... or any similar activity" to the qualifying crime checked in Part 3.1 and if not, whether the preponderance of all the relevant, credible evidence otherwise shows that the Petitioner was the victim of qualifying criminal activity which the certifying agency detected, investigated, or prosecuted as having been committed against the Petitioner. Section 101(a)(15)(U)(iii) of the Act; *see* 8 C.F.R. § 214.14(2)(i)-(ii), (4) (specifying the Supplement B as required initial evidence, which USCIS will consider in conjunction with any other relevant evidence, the credibility and evidentiary weight of which USCIS will determine within its sole discretion).

Here, the Director relied primarily on the criminal statute for robbery listed in the police report in determining that the certifying agency only detected and investigated the non-qualifying crime of first degree robbery as perpetrated against the Petitioner. The Director also determined that the robbery

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<sup>2</sup> The Petitioner also states on appeal that he would provide an additional brief and/or evidence within 30 days of filing the appeal. To date, the record does not contain an additional brief or evidence from the Petitioner.

that was detected did not rise to the level of a felonious assault in Kentucky, including first and second degree assault under sections 508.010 and 508.020 of the Ky. Rev. Stat. Ann. Upon review, the preponderance of the record demonstrates that the certifying agency also detected second degree assault under section 508.020 of the Ky. Rev. Stat. Ann., a state equivalent of the qualifying crime of felonious assault, as committed against the Petitioner during the robbery, as he asserts. *See Interim Rule, New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (stating that qualifying criminal activity may occur during the commission of non-qualifying criminal activity).

In the Supplement B form here, the certifying official specifically checked the box in Part 3.1 indicating that the Petitioner was the victim of criminal activity involving "felonious assault," among other crimes. Additionally, contrary to the Director's finding, the certifying official described criminal conduct in the Supplement B that is consistent with an assault classified as a felony in Kentucky at the time the crime was committed, specifically second degree assault. Second degree assault was defined, in pertinent part, as follows:

- (1) A person is guilty of assault in the second degree when. . . .
  - (b) He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (2) Assault in the second degree is a Class C felony.

Ky. Rev. Stat. Ann. § 508.020 (West 2015). Further, in interpreting the severity of the injury required, courts have found that the requirements of section 508.020(1)(b) of the Ky. Rev. Stat. Ann. are met when "any injury" results from the intentional use of a deadly weapon or dangerous instrument. *Meredith v. Com.* 628 S.W.2d 887, 888 (Ky. App. 1982). Definitions in Kentucky statute also identifies "dangerous instrument" and "deadly weapon," in pertinent part, as follows:

- (3) "Dangerous instrument" means any instrument, including parts of the human body when a serious physical injury is a direct result of the use of that part of the human body, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury;
- (4) "Deadly weapon" means any of the following:
  - . . . .(c) Any knife other than an ordinary pocket knife or hunting knife.

Ky. Rev. Stat. Ann. § 500.080 (West 2015).

Here, while the law enforcement documents do not specify a statutory citation or otherwise reference a felonious assault under a specific Kentucky statute, they reflect that the certifying agency detected the intentional infliction of "physical injury by means of a deadly weapon or a dangerous instrument," namely, a knife, consistent with elements of second degree assault in Kentucky. These documents describe the perpetrator displaying a knife, slashing the Petitioner with it, and cutting the Petitioner's

hand while attempting to prevent the Petitioner from intervening in the robbery. The police report narrative also characterized the Petitioner as having been “assaulted” and suffering “a laceration on his left hand from the knife”. The police report also describes the two perpetrators as threatening to kill the Petitioner and his spouse and physically harming the spouse as well as the Petitioner.

A preponderance of the evidence, including the Supplement B certification of the Petitioner as a victim of felonious assault and the underlying police report, therefore sufficiently establishes that the certifying agency detected felonious assault under Kentucky law as perpetrated against the Petitioner. Consequently, the Petitioner has established that he was the victim of qualifying criminal activity. We now turn to whether the Petitioner has established that the qualifying criminal activity resulted in substantial physical or mental abuse to him as the Act requires.

#### C. The Petitioner Suffered Substantial Physical and Mental Abuse as a Result of the Qualifying Criminal Activity

In order to establish eligibility for U nonimmigrant status, victims of qualifying criminal activity must demonstrate that they have suffered substantial physical or mental abuse as a result of having been a victim of such activity. Section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. § 214.14(b)(1). A determination of whether petitioners have suffered substantial abuse is based on a consideration of various factors including “the nature of the injury inflicted; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions.” 8 C.F.R. 214.14 § (b)(1).

In support of his claim of substantial mental abuse, the Petitioner submitted below two mental health evaluations which diagnosed the Petitioner with PTSD and depression, manifesting in various symptoms. The Director found that because the Petitioner had not established that he was the victim of qualifying criminal activity, he necessarily did not demonstrate that he had suffered substantial physical or mental abuse as the result of such criminal activity. The Director further concluded that even if the Petitioner showed he was the victim of a qualifying crime, the record still did not establish the requisite substantial physical or mental abuse. In making this determination, the Director noted that the criminal incident against the Petitioner was only a single occurrence of short duration that “required very minimal” physical care and that in the intervening six years since the crime occurred, the Petitioner had “two psychological assessments and a single psychological service.” The Director acknowledged the Petitioner’s fear during the incident and PTSD diagnosis, but determined that the Petitioner nevertheless had not established that he suffered substantial physical or mental abuse. On appeal, the Petitioner argues that he has established that he did and continues to suffer psychological harm and long-term effects of the crime.

Upon review of the record in its entirety, including the arguments on appeal, we find that the Petitioner has demonstrated that he suffered substantial abuse as a result of the qualifying criminal activity committed against him, as section 101(a)(15)(U)(i)(I) of the Act requires. While the record does not show, nor does the Petitioner argue on appeal, that he suffered substantial physical abuse, a preponderance of the evidence indicates that the severity of the perpetrators’ conduct resulted in substantial mental abuse to the Petitioner. *See* C.F.R. 214.14 § (b)(1) (stating that no one single factor is a prerequisite to establishing the abuse suffered was substantial). The law enforcement records

documented the armed perpetrators' assault of and threats against both the Petitioner and his spouse during the armed robbery at the store where the couple was working. Although the Director correctly notes that the robbery incident was a single occurrence, the record shows that during the incident, the Petitioner was threatened with a gun and knife, pushed, separated from his spouse, and slashed with the knife, resulting in a cut on his hand. He further witnessed the perpetrators hitting his spouse on the head with a gun, knocking her to the ground, and dragging by her hair. The Petitioner also experienced lasting effects from the experience as recently as 2021. He has been diagnosed with PTSD and stated below that the experience made him feel afraid, nervous, and depressed, and that he experienced insomnia and paranoia. Further, the Petitioner no longer felt comfortable working at the same location and had to change jobs.

Considering the foregoing, the Petitioner has established by a preponderance of the evidence that he suffered and continues to suffer substantial mental abuse as a result of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. § 214.14(b)(1). The Director's determination to the contrary is withdrawn.

### III. CONCLUSION

The Petitioner has overcome the Director's grounds for denying his U petition. Therefore, we will remand the matter to the Director for consideration of whether the Petitioner has met the remaining eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded to the Director for the entry of new decision consistent with the foregoing analysis.