



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

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

In Re: 21539291

Date: APR. 14, 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)), concluding that the Petitioner did not establish that he was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner asserts his eligibility for U nonimmigrant status and submits a brief. 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, 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; 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 burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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).

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.¹ 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 Evidence and Procedural History

The Petitioner filed his U petition based on a criminal incident he experienced in [] 2015. The Petitioner simultaneously submitted a Supplement B certified by an officer (certifying official) with the [] Police Department (certifying agency) in [] North Carolina. In the Supplement B, the certifying official checked the box in part 3.1 indicating that the Petitioner was a victim of activity involving or similar to “other: robbery with firearm”. In part 3.3, the certifying official did not cite to any North Carolina statutory provision when prompted to provide the specific statutory citation for the criminal activity investigated or prosecuted. The narrative portion of the Supplement B did not contain any further description of the criminal activity or any known or documented injury to the Petitioner. The police incident report attached to the Supplement B described the Petitioner as the victim of a “Robbery W/ Firearm Or Other Dangerous Weapon”. The report stated that two masked men armed with handguns entered the Petitioner’s hotel room and stole money from the other two people staying with the Petitioner in the room. A second updated police report confirms the account in the first police report and contains additional information about the Petitioner assisting the police investigation by identifying suspects. This second report also identified the statute for the robbery offense as section 14-87 of North Carolina General Statutes Annotated (N.C. Gen. Stat. Ann).

In response to a request for evidence (RFE) by the Director, the Applicant submitted a second Supplement B certified in August 2021 by an assistant chief of police (certifying official) with the [] Police Department (certifying agency) in [] North Carolina. The second Supplement B did not specify a specific criminal activity in part 3.1. In part 3.3, the certifying official identified section 14-87 of the N.C. Gen. Stat. Ann. as the criminal activity investigated or prosecuted. Finally, the RFE response also contains a letter from the certifying official of the second Supplement B stating that the Petitioner was a witness in the [] 2015 incident when two armed suspects stole cash from the hotel room where he was staying.

The Director denied the U petition in November 2021, concluding that the Petitioner had not established that he was the victim of a qualifying crime. Specifically, the Director found that the Supplement B indicated that the Petitioner had been the victim of robbery under section 14-87 of the of the N.C. Gen. Stat. Ann., which is not a qualifying crime, and that neither the Supplement B nor

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 police reports indicated that a qualifying criminal activity was detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The Director further determined that robbery under section 14-87 of the of the N.C. Gen. Stat. Ann. did not constitute criminal activity substantially similar to a qualifying crime.

B. The Petitioner Was Not the Victim of Qualifying Criminal Activity

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* (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; *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 . . .”).

Here, as the Director correctly determined, the record, including the Supplement B and underlying arrest report, establishes that the certifying agency detected robbery, which is not a qualifying crime, as perpetrated against the Petitioner, and does not reflect that the certifying agency detected any other crime. The Petitioner does not contest this finding on appeal, but rather argues that that he is the victim of qualifying criminal activity because the robbery detected is substantially similar to the qualifying crimes of felonious assault and kidnapping.

As stated above, to qualify as a victim for U-1 classification, petitioners must establish that the crime detected, investigated, or prosecuted as perpetrated against them, and of which they are victim, is a qualifying crime or is substantially similar to the qualifying crime. Section 101(a)(15)(U)(iii) of the Act (providing that qualifying criminal activity is “that involving one or more of” the 28 types of crimes listed or “any similar activity in violation of Federal, State, or local criminal law”); 8 C.F.R. § 214.14(a)(9) (providing that 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). When a certified offense is not a qualifying criminal activity 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. *Id.* 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. *See also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency’s authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner). Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense “involved,”

or was “substantially similar” to, a “qualifying crime or qualifying criminal activity” as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9).

1. The Petitioner Is Not the Victim of a Crime Substantially Similar to the Qualifying Crime of Felonious Assault

On appeal, the Petitioner contends that North Carolina robbery with a firearm under section 14-87 of the N.C. Gen. Stat. Ann. and felonious assault, specifically aggravated assault as defined in the U.S. Sentencing Guidelines Manual § 2A2.2 cmt. n.1 (2014), are substantially similar because they both require intent by the defendant and an element of fear, are crimes against the person, and have aggravating elements of harm and involve use of a firearm to commit another crime. However, this federal definition of a felony level assault under the U.S. Sentencing Guideline is not relevant here, and the Petitioner does not argue that a specific North Carolina assault statute classified as a felony is substantially similar to robbery with a firearm, the crime detected in his case. The U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a “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) (providing that qualifying criminal activity includes “any similar activity in violation of Federal, State or local criminal law” as a qualifying criminal activity); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency’s authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner). Here, North Carolina, the jurisdiction where the crime occurred, has felony level assault statutes. As the Petitioner has not identified a felonious assault under North Carolina law, he has not met his burden of demonstrating that the crime detected as perpetrated against him, and of which he is the victim, is substantially similar to the qualifying crime of felonious assault under North Carolina law.

2. The Petitioner Is Not the Victim of a Crime Substantially Similar to the Qualifying Crime of Kidnapping

On appeal, the Petitioner argues that North Carolina robbery with a firearm under section 14-87 of the N.C. Gen. Stat. Ann. and kidnapping under section 14-39 of the N.C. Gen. Stat. Ann. are substantially similar because threatening a victim with a firearm is an unlawful seizure or confining of the victim. The Petitioner has not established that the nature and elements of the detected crime are substantially similar to the qualifying crime of kidnapping.²

Per the Petitioner’s argument, section 14-39 of the N.C. Gen. Stat. Ann., at the time of the criminal activity in 2015, defined kidnapping, in pertinent part, as:

Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person. . . .shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of. . . .

² The Petitioner argues on appeal that robbery with a firearm in North Carolina inherently contains the elements of kidnapping under 18 U.S.C. § 1201. However, the federal definition of kidnapping is not relevant in this case because North Carolina, where the criminal incident in question took place, has a kidnapping statute.

- (2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony. . . .

(West 2015). Conversely, when the crime was perpetrated against the Petitioner in 2015, section 14-87 of the N.C. Gen. Stat. Ann. defined “robbery with firearms or other dangerous weapons,” in pertinent part, as:

Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another. . . .

(West 2015). The nature and elements of kidnapping are notably distinct from those of robbery with a firearm under section 14-87 of the N.C. Gen. Stat. Ann. Robbery with a firearm involves the possession, use, or threatened use of a dangerous weapon to take or attempt to take the personal property of another, which is not required to establish kidnapping. Kidnapping involves confinement, restraint, or removal of a person for certain purposes, including facilitating the commission of a felony. Unlike robbery with a firearm, kidnapping also does not require the element of larceny and the possession or use of a weapon. While portions of armed robbery may, in certain circumstances, overlap with the state’s equivalent to the qualifying crime of kidnapping, the regulations require more—specifically, substantial similarities in both the nature and the elements of the specific offenses in question. 8 C.F.R. § 214.14(a)(9); *see also* Black’s Law Dictionary (11th ed. 2019) (defining “nature” as the “essence of something,” while defining “elements of a crime” as the “constituent parts of a crime . . . that the prosecution must prove to sustain a conviction”). Accordingly, the nature and elements of armed robbery under section 14-87 of the N.C. Gen. Stat. Ann., the statute detected by law enforcement as perpetrated against the Petitioner, are not substantially similar to a kidnapping in North Carolina, as asserted on appeal.

The Petitioner further contends that the factual circumstances of the robbery he experienced were substantially similar to kidnapping. However, an inquiry into whether the two offenses are substantially similar is not fact-based, but rather entails comparing the nature and elements of the statutes in question. 8 C.F.R. § 214.14(a)(9). Here, as discussed, the nature and elements of the criminal activity detected as perpetrated against the Petitioner are not substantially similar to those of the qualifying crime of kidnapping in North Carolina.

As the record does not establish that the certifying agency detected qualifying criminal activity or criminal activity substantially similar to one of the qualifying crimes, the Petitioner has not demonstrated that he is a victim of a qualifying crime at section 101(a)(15)(U)(iii) of the Act.

B. 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. Section 101(a)(15)(U)(i)(I)-(IV) of the Act. As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The record shows that the Petitioner was the unfortunate victim of armed robbery. However, he has not met his burden of proof to establish, by a preponderance of the evidence, that he is the victim of qualifying criminal activity or criminal activity substantially similar to a qualifying crime under section 101(a)(15)(U)(iii) of the Act. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.