U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20596775

Date: APR. 14, 2022

Motion on Administrative Appeals Office 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), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reconsider. The Petitioner submits additional evidence and a brief reasserting his eligibility. Upon review, we will dismiss the appeal.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish that she: has suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possesses information concerning the qualifying criminal activity; and has been helpful, is being helpful, or is likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. 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 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 a part of establishing eligibility for U-1 nonimmigrant classification, a petitioner must submit, as required initial evidence, 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). As further provided on the relevant form instructions, the Supplement B must contain an original signature and U.S.

Citizenship and Immigration Services (USCIS) "will not accept a photocopy of the signature page of the Supplement B or a typewritten name in place of a signature." Form I-918, Instructions for Supplement B, U Nonimmigrant Status Certification (12/6/21 ed.) at 2-4, *available at* https://www.uscis.gov/sites/default/files/document/forms/i-918supbinstr.pdf; *see also* 8 C.F.R. § 103.2(a)(1) (providing that every form, benefit request, or other document must be executed in accordance with the relevant form instructions, and incorporating the form instructions into the regulation requiring its submission).

USCIS has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). 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). 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, 376 (AAO 2010).

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A. Relevant Evidence and Procedural History

As discussed in our prior decision, hereby incorporated by reference, the Petitioner filed the instant U petition in May 2015 with a Supplement B signed and certified by a detective with the [redacted] Police Department [redacted] in [redacted] California (certifying official) in December 2014, based on criminal activity committed against the Petitioner the same year. The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other:" and wrote in "DUI/Felony." The certifying official listed section 23153(a) (driving under the influence (DUI) causing injury) of the California Vehicle Code (Cal. Veh. Code) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted and any known injury to the Petitioner, the certifying official indicated that "[the Petitioner] was struck by [the perpetrator's] car, causing him to be pinned between his friend's vehicle and the vehicle parked next to them." The certifying official further stated that the Petitioner suffered a serious injury to his right leg, which resulted in its amputation. The traffic collision report accompanying the Supplement B identified the incident as a multivehicle traffic collision. The narrative portion of the traffic collision report provided further details about the incident including that the perpetrator, who displayed signs of intoxication, hit two vehicles and two pedestrians, and caused significant property damage. The Petitioner submitted a personal statement that confirmed the information in the traffic collision report.

After reviewing the evidence, the Director determined that the Supplement B submitted at filing did not contain an original signature, as required by the form instructions and 8 C.F.R. § 103.2(a)(1). The Director further determined that the crime listed on the Supplement B and related law enforcement documentation, DUI causing injury under section 23153(a) of the Cal. Veh. Code, was not a qualifying

crime as listed in the statute and implementing regulations. As a result, the Director issued a request for evidence (RFE) for a Supplement B signed with an original signature as well as additional evidence indicating that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, a qualifying crime.

In response to the RFE, the Petitioner submitted an updated Supplement B signed and certified by another certifying official from the [redacted] in January 2020, court disposition records, and updated medical records, among other documents. On the updated Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." The certifying official also cited to sections 23153(a) (DUI causing injury) and 23560(a) (second DUI conviction within 10 years) as the specific statutory citations investigated or prosecuted. When asked to provide a description of the activity being investigated or prosecuted, the certifying official stated that, "[the Petitioner] (pedestrian) was struck by [the perpetrator's] vehicle as she ran off the road. [She] was driving while under the influence of an unknown intoxicant." The certifying official additionally reiterated that the perpetrators actions led to the Petitioner being struck by the perpetrator's vehicle, resulting in the amputation of his lower right leg. The court disposition records form the Superior Court of California, County of [redacted] indicates that the perpetrator was charged with DUI causing injury and second DUI conviction within 10 years under sections 23153(a) and 23560(a) of the Cal. Veh. Code, respectively. The perpetrator pled *nolo contendere* to the charge of DUI causing injury. She admitted to the charge of a prior DUI conviction within 10 years. She was sentenced to 52 months of incarceration, which included a three-year sentencing enhancement pursuant to section 12022.7(a) of the California Penal Code (Cal. Penal Code). *See* Cal. Penal Code § 12022.7(a) (providing that "[a]ny person who personally inflicts great bodily injury on any person . . . in the commission of a felony . . . shall be punished by an additional and consecutive term of imprisonment . . . for three years")(West 2014). The Director considered the evidence submitted and denied the U petition, determining that the updated Supplement B did not contain an original signature as required by the regulation and that, even if the Supplement B had contained an original signature, the Petitioner had not established that the crime investigated or prosecuted as perpetrated against him constituted qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9).

On appeal, the Petitioner provided a new Supplement B signed by the certifying official in April 2020 and containing an original signature. The checked box, statutory citations, and description of the criminal activity investigated or prosecuted mirrored those on the January 2020 Supplement B. The Petitioner asserted that he "understood the [May 2015] certification to contain an original signature, as it was provided directly by the certifier." He asked that we reconsider the denial of his U petition and determine that he had previously submitted, and was once again submitting, a properly executed Supplement B. He further asserted that the record contained sufficient evidence to establish that law enforcement detected, investigated, or prosecuted, and he was the victim of, a qualifying crime. After reviewing the record, we determined that the Petitioner did not submit the required initial evidence with his U petition because the April 2020 Supplement B submitted on appeal was not signed by the certifying official within the six-month period preceding the filing of his U petition, as required by 8 C.F.R. § 214.14(c)(2)(i).[1]

[1] Based on this determination, we declined to reach and reserved the Petitioner's arguments regarding qualifying criminal activity.

B. Properly Executed Supplement B

On motion, the Petitioner contends that reconsideration is warranted because "the evidence previously submitted with [his] initial application and RFE response, along with the legal arguments [made on motion], support a finding that [he] did satisfy the initial requirements for U-1 classification." In support of his contentions, the Petitioner submits a brief, statements from himself and his attorney, and a letter from the Domestic Violence and U-Visa Coordinator from the [redacted] In her letter, the Domestic Violence and U-Visa Coordinator states that, "while [she] is unable to determine if the signature on the I-918 Supplement B submitted in this case [wa]s an original, [she] can state that [redacted] policy is for the original certification to be given to the applicant." In his statement, the Petitioner explains that "[i]n December 2014, [his] attorney informed [him] that [his] I-918, Supplement B had been certified by the [redacted] Police Department and asked [him] to go pick it up and bring it to her office." The Petitioner further explains that he "personally picked [up] the signed form" from the [redacted] South Traffic Division and delivered it exactly as he received it to his attorney on January 20, 2015. He maintains that he did not make a copy of the Supplement B. The Petitioner's attorney confirms this account, noting that he extensively reviewed internal notes which indicate that the Petitioner dropped off his Supplement B on January 20, 2015.[2] Additionally, the Petitioner's attorney asserts that the policy at the Immigration Center for Women and Children (ICWC) has always been to submit the original Supplement B, and that "[o]ver the course of 17 years[,] the organization's attorneys have handled thousands of I-918 cases and have consistently complied with this policy because of the understanding that an original signature is a requirement for a valid I-918 Supplement B." He further asserts that, given the [redacted]'s policy to provide a Supplement B with an original signature, he has no reason to question the validity of the signature on the Petitioner's Supplement B. Lastly, he maintains that "the potential consequences of this dismissal are unjust considering [the Petitioner] did nothing wrong but rely on the [redacted] to provide him with the appropriate I-918, Supplement B for his case."

Upon further review of the record, including examination of the Supplements B in the record and consideration of the Petitioner's arguments on motion to reconsider, the record remains unclear as to whether the Petitioner has submitted a properly executed Supplement B. However, we need not resolve this issue because, even assuming the Supplement B submitted at filing was properly executed, the Petitioner has not met his burden of establishing that he is the victim of qualifying criminal activity. A detailed explanation follows.

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

1. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime 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

[2] The Petitioner also submits email correspondence between his prior attorney and an [redacted] official as further evidence that he was instructed by her to pick up the original Supplement B in December 2014.

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 . . . .").

On motion, the Petitioner argues that he was the victim of a felonious assault because "regardless of the categorization of the investigation, the facts that arose support a finding that he was the victim of a felonious assault." Insomuch as the Petitioner argues that he was the victim of felonious assault due to the factual circumstances of the offense, his argument is unavailing.[3] While remaining sensitive to the harm suffered by the Petitioner as a result of the incident in question, 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 law enforcement actually detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III), (iii) of the Act; *see also* section 214(p)(1) of the Act (requiring certification from law enforcement establishing the petitioner's helpfulness "in the investigation or prosecution of" qualifying criminal activity"); 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 . . . .").

We acknowledge that, on the January and April 2020 updated Supplements B, the certifying official checked the box indicating that the Petitioner was the victim of criminal involving or similar to the qualifying crime of felonious assault. However, the January and April 2020 Supplements B, when read as a whole and in conjunction with the other evidence in the record, do not establish, by a preponderance of the evidence, 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) (stating 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."); *Matter of Chawathe*, 25 I&N Dec. at 375 (laying out the preponderance of the evidence standard).

As a preliminary matter, on the original Supplement B submitted with the Petitioner's U petition and completed within one year of the incident in question, the certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to, and cited as investigated or prosecuted as perpetrated against him, felony DUI under section 23153(a) of the Cal. Veh. Code. The original Supplement B, as well as the January and April 2020 updated Supplements B, do not cite to, or otherwise indicate, that law enforcement detected, investigated, or prosecuted, or the Petitioner was the victim of, any felony-level assault under California law. Furthermore, the remaining relevant

[3] The Petitioner references USCIS's Interim Rule and asserts that it "provides the correct framework for the [qualifying criminal activity] inquiry, one which focuses on faces [*sic*] as well as criminal elements, [which] is illuminated by the statutory scheme and congressional intent."

evidence in record similarly does not indicate that felonious assault was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The Traffic Collision Report from the State of California, Department of California Highway Patrol, produced shortly after the criminal activity occurred, did not reference any felony-level assault as perpetrated against Petitioner, or an attempt to do so. Instead, the report indicates that law enforcement detected and investigated as perpetrated against the Petitioner the crime of DUI causing injury under California law. Specifically, the Traffic Collison Report indicates that there were two offenses committed—DUI under section 23152(a) and speeding under section 22350 of the Cal. Veh. Code. The narrative/supplemental report also does not indicate that a felony-level assault of the Petitioner was detected or investigated. Rather, the report indicates that two California Highway Patrol officers responded to a call of a "multi vehicle traffic collision" resulting in injuries to two pedestrians and significant property damage. The same report states that the perpetrator was charged with "23153(A) VC-Felony with (1) prior with [*sic*] Traffic Collision." Similarly, the court disposition records including the *Subpoena for Witness* from the Office of the District Attorney in [redacted] California, indicates that the perpetrator was formally charged with, and pled *nolo contendere* to, DUI causing injury and a second DUI conviction within 10 years under sections 23153(a) and 23560 of the Cal. Veh. Code. As a result, and as outlined in the Director's decision, the updated Supplement Bs' checked boxes indicating the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" under California law are internally inconsistent with the remainder of their contents and externally inconsistent with the initial Supplement B and the information in both the traffic collision report and court records, which served as the basis for the certification of the Supplement B. Specifically, the traffic collision report and accompanying narrative descriptions of the incident, charging documents, and court disposition records regarding the prosecution of the perpetrator do not indicate that a felony-level assault under California law was at any time detected, investigated, or prosecuted as perpetrated against the Petitioner. 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 him.

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). 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 as perpetrated against him. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and he was the unfortunate victim of, DUI causing injury.

2. DUI Causing Injury under California Law Is Not Substantially Similar to the Qualifying Crime of Felonious Assault

DUI causing injury under section 23152(a) of the Cal. Veh. Code is not specifically listed as a qualifying crime under 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, as here, 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. 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 at section 101(a)(15)(U)(iii) of the Act 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). 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. 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).

On motion, the Petitioner first contends that DUI causing injury is substantially similar to assault under section 240 of the California Penal Code (Cal. Penal Code). We note however, that 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) (identifying "felonious assault" when committed "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). As relevant in this case, section 245 of the Cal. Penal Code defines and lays out the elements required to sustain a conviction for an assault punishable as a felony and is, accordingly, the proper statute of comparison in determining whether the nature and elements of the crime of DUI causing injury are substantially similar to the qualifying crime of felonious assault. *Compare* Cal. Penal Code §§ 17, 240, and 241 (defining "assault" and providing that, unless committed against a specific class of persons not applicable here, such crime is punishable as a misdemeanor), *with* Cal. Penal Code §§ 17 and 245(a) (providing the elements required to sustain a conviction for and classifications of an assault involving a deadly weapon or force likely to produce great bodily injury, and indicating that is it punishable as a felony) (West 2014).

The Petitioner further contends that DUI causing injury is substantially similar to assault with a deadly weapon under section 245(a) because both statutes share the same elements.[4] The record does not support the Petitioner's contentions.

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[4] The Petitioner references *United States v. Rocha*, 598 F.3d 1144 (9th Cir. 2010) (citing *United States v. Anchrum*, 590 F.3d 795 (9th Cir. 2009)), highlights that the California courts have determined that vehicles constitute "deadly or dangerous weapons if they are used in a way that is capable of causing death or serious bodily injury[,]" and asserts that the perpetrator used the vehicle in such a fashion in his case. As explained previously, however, our analysis in determining substantial similarity is not fact-based, but rather entails comparing the nature and elements of the crime certified as detected, investigated, or prosecuted as perpetrated against the petitioner 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. 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 at section 101(a)(15)(U)(iii) of the Act 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). Here, and borrowing from the analysis above, the record indicates that the only crime detected, investigated, or prosecuted as perpetrated against the Petitioner was DUI causing injury.

At the time of the offense against the Petitioner, California law defined DUI causing injury as follows:

> It is unlawful for a person, while under the influence of any alcoholic beverage, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

Cal. Veh. Code § 23153(a) (West 2014).

California law defines assault as "an unlawful attempt coupled with present ability, to commit a violent injury on the person of another." Cal. Penal Code § 240 (West 2014). For an assault to be classified as a felony in California, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury. *See* Cal. Penal Code §§ 17 and 245 (providing that an assault committed with a deadly weapon or force likely to produce great bodily injury is punishable as a felony).

We acknowledge that the perpetrator's conviction for DUI causing injury with a sentencing enhancement under section 12022.7 indicates that the underlying offense was charged as a felony and involved an aggravating factor relating to the infliction of great bodily injury. However, the offense of DUI causing injury under section 23153(a) of the Cal. Veh. Code is otherwise distinct in its nature and elements from California's equivalents to the qualifying crime of felonious assault under section 245(a) of the Cal. Penal Code. First, the elements of these two statutes differ in several respects, as DUI causing injury requires (1) driving; (2) an individual under the influence of alcohol and/or drugs; and (3) the concurrent commission of an unlawful act or neglected driving duty. Felonious assault under section 245(a) of the Cal. Penal Code does not contain any of these elements. Indeed, the California Supreme Court has indicated that juries should not be instructed to "consider evidence of [a] defendant's intoxication in determining whether [they] committed assault with a deadly weapon on a peace officer or any of the lesser assaults." *People v. Hood*, 462 P.2d 370, 379 (1969). Furthermore, assault under California law requires an intentional act, whereas DUI causing injury can be committed based on negligence or recklessness. *Compare People v. Williams*, 26 Cal. 4th 779, 788-790 (2001) (holding that although the crime of assault "does not require a specific intent to cause injury," it still does require "an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another," and affirming that "mere recklessness or criminal negligence is [] not enough [] because a jury cannot find a defendant guilty of assault based on facts he should have known but did not know"), *with People v. Oyaas*, 173 Cal. App. 3d 663, 669-70 (1985) (holding that DUI with injuries under section 23153 of the Cal. Veh. Code may be established even where the perpetrator's neglect of duty "amounts to no more than ordinary negligence" or a neglect of the "duty which the law imposes on any driver to exercise ordinary care at all times and maintain a proper control of his or her vehicle"). Finally, the legislative purpose behind California's DUI causing injury statute is to reduce highway deaths and injuries, and to punish more severely drivers who commit a concurrent unlawful act or breach of duty while driving under the influence. *See People v. Weems*, 54 Cal. App. 4th 854, 860 (1997) ("We are convinced that one of the legislative purposes underlying . . . section 23153 is . . . 'to reduce highway deaths and injuries . . . .' . . . The specific intent of the Legislature in enacting section 23153 was to punish more severely those drivers who commit a concurrent unlawful act or breach of duty in addition to driving under the influence."). As felonious assault under section

245(a) of the Ca. Penal Code does not require either vehicular violations or driving under the influence, it does not share these legislative purposes. Based on the foregoing, the Petitioner has not established the nature and elements of DUI causing injury are substantially similar to felonious assault in California, and therefore has not demonstrated that he was a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act.

Lastly, the Petitioner argues that "irrespective of the way it is outlined in the California codes, felony driving under the influence causing great bodily injury is in all regards an aggravated and felonious assault." He cites to U.S. Sentencing Commission Guidelines and several state statutes penalizing driving under the influence causing great bodily injury as an assault and a felony and argues that "it would be strikingly unfair to crime victims in California if they are unable to obtain lawful status . . . because the California Penal Code . . . uses terminology other than 'aggravated assault' or 'felonious assault' to define the range of assaults that are felonious." However, the relevant crime perpetrated against the Petitioner took place in California, and was investigated by the [redacted] The record does not indicate, and the Petitioner does not assert on appeal, that the relevant offense occurred in more than one jurisdiction or was otherwise investigated by a federal authority such the statutory schemes of other states or the U.S. Sentencing Commission Guidelines are relevant in this case. As the Petitioner has not established that DUI causing injury is substantially similar to felonious assault under California law, or any other qualifying crime, he has not demonstrated that he was a victim of qualifying criminal activity.

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 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.

ORDER: The appeal is dismissed.