



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

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

In Re: 20083589

Date: February 2, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

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). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and the matter is before us on appeal. The Administrative Appeals Office (AAO) reviews all 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

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, 376 (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)(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).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner, a native and citizen of Mexico, filed his U petition with a Supplement B signed by the Chief (certifying official) of the [redacted] North Carolina Police Department (certifying agency), based on a [redacted] 2014 incident in which he was robbed at gunpoint at a gas station. In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the certifying agency indicated that the Petitioner was a victim of criminal activity involving or similar to “Other—Robbery.” In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying agency listed section 14-87 of the North Carolina General Statutes (N.C. Gen. Stat.), “Armed Robbery.” Part 3.5 of the Supplement B, which contains a narrative description of the criminal activity being investigated and/or prosecuted, states that “[the Petitioner] reported he was robbed of his property at gunpoint.” Part 3.6, which requests a description of any known or documented injuries, states that the Petitioner “was not injured during this incident.” An additional narrative on the Supplement B states, as relevant here, that as the Petitioner was getting into his car at a gas station, an unknown male told him not to move and to give him his money, and that he held a gun down by the Petitioner’s leg, close to his body. The narrative states that according to the Petitioner, the perpetrator took \$100 from his wallet, told him not to call anyone, and then fled the gas station.

The Petitioner also submitted the corresponding incident report from the certifying agency. The incident report classifies the incident as “Robbery/Robbery: Armed,” notes that a handgun was the weapon, lists the property taken as a “\$100 bill,” and states that “an unknown suspect took the above listed property from [the Petitioner] at gunpoint and then left the scene.”

The Director denied the U petition, determining that the Petitioner had not demonstrated that he was a victim of qualifying criminal activity, as required. The Director explained that armed robbery is not specifically listed as qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act and the crime of which the Petitioner was a victim, robbery with a firearm under N.C. Gen. Stat. § 14-87, does not involve any of the enumerated qualifying crimes or constitute criminal activity substantially similar to a qualifying crime. The Petitioner has not overcome this determination on appeal.

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.

B. 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 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. 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 his burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. Neither the Supplement B nor incident report refer to or describe the incident as a felony assault, as both documents consistently refer to the crime committed as an armed robbery. Furthermore, the Supplement B provides the statutory citation for armed robbery, and not assault. The Petitioner has not provided any other evidence indicating that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against him. *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”).

C. Armed Robbery Under North Carolina Law Does Not Involve and is Not Substantially Similar to the Qualifying Crime of Felonious Assault

As noted by the Director, armed robbery is not a qualifying crime included in section 101(a)(15)(U)(iii) of the Act. The Act lists general categories of criminal activity and includes conduct “involving” one or more of the qualifying crimes. Section 101(a)(15)(U)(iii) of the Act; *see also* Interim Rule, 72 Fed. Reg. at 53018 (reiterating that section 101(a)(15)(U)(iii) of the Act “is not a list of specific statutory citations, but instead a list of general categories of criminal activity”). The Act also provides that “any similar activity” to the qualifying crimes may be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. However, the regulations explicitly define the term “any similar activity” in section 101(a)(15)(U)(iii) of the Act as offenses whose “nature and elements . . . are substantially similar” to a statutorily enumerated qualifying crime. 8 C.F.R. § 214.14(a)(9). Accordingly, qualifying criminal activity either “involves,” or is substantially similar in its nature and elements, to a category of criminal activity enumerated in the Act. Mere overlap with or commonalities between an offense and a statutorily enumerated qualifying crime 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 appeal, the Petitioner claims that he has established that he is a victim of the qualifying criminal activity of felonious assault because it is well-settled under North Carolina common law that armed robbery under N.C. Gen. Stat. § 14-87, the crime of which he was a victim, contains the offense of assault with a deadly weapon. *See, e.g., State v. Richardson*, 279 N.C. 621, 628 (1971). Under this reasoning, he avers that he is a victim of qualifying criminal activity because he is necessarily a victim of N.C. Gen. Stat. § 14-33, assault with a deadly weapon, which is sufficient to render him a victim of felonious assault. However, this statute provides, in pertinent part, that “any person who commits any assault. . . is guilty of a *Class A1 misdemeanor* if, in the course of the assault. . . [the person i]nflicts serious injury upon another person or uses a deadly weapon.” N.C. Gen. Stat. § 14-33(c) (emphasis added). As such, although we acknowledge the Petitioner’s claim and the perpetrator’s use of a handgun, assault with a deadly weapon is a misdemeanor offense, which does not rise to the level of severity needed to be considered “felonious,” as required by section 101(a)(15)(iii) of the Act.

The Petitioner further references N.C. Gen. Stat. § 14-32, in which the use of a deadly weapon with the intent to kill or resulting in serious injury elevates an assault with a deadly weapon to a felony offense. He claims that he is the victim of the qualifying crime of attempt to commit felony assault under N.C. Gen. Stat. § 14-32, because the perpetrator attempted to inflict serious bodily injury upon him when he approached him at the gas station with a gun. However, this claim is not supported by the record, as neither the Supplement B nor any supporting evidence indicate that the certifying agency detected, investigated, or prosecuted the crime of attempt or that the perpetrator attempted to inflict serious injury upon him, and we do not speculate as to crimes that could have been detected or charged. *See* 8 C.F.R. § 214.14(c)(4) (explaining that petitioners bear the burden to establish eligibility); *Matter of Chawathe*, 26 I&N Dec. at 537 (describing a petitioner’s burden under the preponderance of the evidence standard).²

Based on the foregoing, the Petitioner has not demonstrated that he was a victim of a qualifying crime or “any similar activity” to the qualifying crimes set forth at section 101(a)(15)(U)(iii) of the Act.

C. 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 a U petitioner is a victim of qualifying criminal activity. As the Director correctly explained, because 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. Consequently, the Petitioner has not established that he is eligible for U-1 nonimmigrant status.

ORDER: The appeal is dismissed.

² Along similar lines, the Petitioner argues that he was the victim of felonious assault under the definition of “[a]ggravated assault” at section 2A2.2 of the Federal Sentencing Guidelines Manual, which is defined as an assault that involves the use of a “dangerous weapon” with intent to cause bodily injury, because he was placed in apprehension of bodily harm or death when the perpetrator pointed the gun at his body. Even assuming, *arguendo*, that the Federal Sentencing Guidelines applied to the instant case, the record does not indicate that the certifying agency detected, investigated, or prosecuted the intent to cause the Petitioner bodily injury. Rather, the Supplement B and incident report emphasize that the perpetrator took property from the Petitioner at gunpoint and then fled the scene.