



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

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

In Re: 22316733

Date: JUL. 26, 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 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 or suffered substantial physical or mental abuse as a result of the crime of which he was a victim. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Administrative Appeals Office reviews 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 remand the matter to the Director for the issuance of a new decision.

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).

To establish eligibility for U-1 nonimmigrant classification, a petitioner must show that they, *inter alia*, have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act; 8 C.F.R. § 214.14(b)(1). The burden of proof is on the 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). 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 such evidence. 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 March 2016 with a Supplement B signed and certified by the lieutenant in the [] Police Department in [] California (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of felonious assault and criminal activity involving or similar to "Other:" and wrote in Robbery-Weapon. In part 3.3, the certifying official listed sections 211 and 245(a)(1) of the California Penal Code (CPC) as the specific statutory citations 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, "Unknown Suspect One stole Victim C-I-H's car club from inside Victim's vehicle and approached Victim in a threatening manner. Suspect One demanded Victim's money while Unknown Suspect Two approached the victim from behind. Fearing for his life, Victim gave Suspects all his cash and both Suspects fled on foot with Victim's money."² The [] Incident Report accompanying the Supplement B identifies the incident as a Robbery-Other Dangerous Weapon and indicates a felony charge. The narrative portion of the police report provides similar information to that which was certified on the Supplement B, and notes that the Petitioner was working, delivering pizzas when one of the suspects removed the car club from the Petitioner's vehicle and used it to threaten the Petitioner. The suspects then took all the cash the Petitioner had on him, as well as his cell phone, before leaving the scene.

After reviewing the evidence in the record, the Director denied the U petition, finding that the Petitioner was not a victim of a qualifying criminal activity, and stated that because the [] Incident Report only indicated the crime being investigated was robbery, and that the Petitioner did not suffer any physical injuries, he was not a victim of any assault. To support this conclusion, the

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.

² We use initials to protect the identity of individuals.

Director argued that “aggravated assault involves a clear intent to commit serious bodily injury to another. In other words, an assault charge becomes aggravated if it is apparent that the perpetrator wanted to inflict major damage with disregard for the victim’s life.” The Director continued, “[a]ccording to [C]PC 245, an aggravated assault charge may also be levied against an individual if the assault was committed with a firearm or a deadly weapon of another sort. The lack of physical injuries sustained by the applicant in the robbery do not indicate a clear intent to commit serious bodily injury to another and although there is evidence that the robbery was committed with a weapon, there were no physical injuries to the petitioner to indicate even the lesser charges of simple assault or battery.”

On appeal, the Petitioner contends that he was the victim of the qualifying crime of felonious assault or that robbery under CPC 211 is substantially similar to the qualifying crime of felonious assault. In support of this assertion, the Petitioner notes that on the Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault.” The certifying official also cited to CPC 245(a)(1), which criminalizes assault with a deadly weapon, as an additional statutory citation investigated or prosecuted. We agree that based on the Supplement B submitted with his U petition, in which the certifying official checked the box for felonious assault and cited CPC 245, that the Petitioner has established that he was the victim of felonious assault, as the perpetrator used a deadly weapon in the process of the robbery.

B. Qualifying Criminal Activity

Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act require 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. 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 . . .”).

At the time of the offense against the Petitioner, the crime of assault was defined as “an unlawful attempt, *coupled with a present ability*, to commit a violent injury on the person of another.” CPC 240 (West 2008) (emphasis added). At the time of the offense against the Petitioner, the crime of assault with a deadly weapon or force likely to produce bodily injury was defined, in pertinent part, as, “[a]ny person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm.” CPC 245(a)(1) (West 2008). As the Petitioner notes on appeal, it appears that the Director’s decision was conflating the act of an assault with an act of a battery, which are separately defined under Cal. Penal Codes. Acts of either assault or aggravated assault, under Cal. Penal Codes, do not require a serious intent to inflict bodily injury or injury to be inflicted upon the victim.

As the Petitioner argues on appeal, the Supplement B submitted with his U petition checked the box indicating that he was the victim of criminal activity involving or similar to the qualifying crime of felonious assault, and the certifying official provided the citation for felonious assault under California law as the crime investigated. Felonious assault under Cal. Penal Law is committed, in relevant part, when a person makes, “an unlawful attempt, coupled with the present ability, to commit a violent injury on the person of another,” . . . “with a deadly weapon or instrument other than a firearm.” The narrative portion of the Supplement B provided, as detected by law enforcement, that the Petitioner was robbed by two men, one of whom threatened the Petitioner with a car club during the robbery. The police report supported that a dangerous weapon was used. The record therefore establishes that a weapon was used in the commission of the assault. Accordingly, and on the basis of the above, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected felonious assault under CPC 245(a)(1) as perpetrated against him. We withdraw the Director’s prior decision to the contrary.

C. Substantial Physical or Mental Harm

In the Director’s decision, it was noted that, as the Petitioner did not establish that he was the victim of qualifying criminal activity, he could not establish that he suffered substantial physical or mental harm as a result of his victimization. The Director continued and stated that the “assault was a single occurrence of short duration that did not require any emergency room care and did not result in any physical effects.” The Director further indicated that the incident occurred in 2008, but the Petitioner provided a mental health evaluation from 2015 with his petition, and “no evidence of treatment in the intervening years since the incident.” While the Director stated that “there is no evidence” that the Petitioner needed any mental or physical care from the incident, the Director’s decision does not discuss or explain why the evidence submitted with the U petition would not be considered or was not considered to be credible. The Petitioner submitted the 2015 mental health evaluation, as well as personal statements, and statements from his family and friends discussing the impact the incident had on the Petitioner’s mental health. While we agree that we determine in our sole discretion, the credibility of and weight to give all of the evidence as outlined in section 214(p)(4) of the Act, the Director failed to discuss in detail why the evidence submitted by the Petitioner was determined to be insufficient.

Remanding a matter is appropriate when the director does not fully explain the reasons for the denial so that the affected party has a fair opportunity to contest the decision and the AAO has an opportunity to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(i),(iii) (providing that the director’s decision must explain the specific reasons for denial and notify the affected party of appeal rights); *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The Director did not provide a sufficient analysis of the evidence submitted by the Petitioner regarding his claims of suffering substantial mental abuse as a result of his victimization. Further, on appeal, the Petitioner has submitted an updated personal affidavit, additional affidavits from those who know him, and evidence of his attendance in a men’s support group. The Director has not had the opportunity to review this evidence in the first instance.

Accordingly, we will remand the matter to the Director for the issuance of a new decision consistent with the foregoing analysis.

III. CONCLUSION

The Petitioner has established that law enforcement detected, investigated, or prosecuted, and he was the victim of, a qualifying crime. Further, the Director did not provide a sufficient analysis of the evidence submitted by the Petitioner in establishing whether he suffered substantial physical or mental abuse. We withdraw the Director's decision and remand the matter for the Director to determine whether the Petitioner has met his burden of establishing the remaining eligibility criteria for U nonimmigrant status.

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