



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

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

In Re: 20613244

Date: MAR. 17, 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), as the victim of qualifying criminal activity. 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 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 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)(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 filed his U petition with a Supplement B signed and certified by a detective with the [redacted] California, Police Department (certifying official), based upon an [redacted] 2014 incident whereby two individuals robbed him at his store, one of the perpetrators struck his face, and the other individual threatened him with gang violence. In response to Part 3.1 of the Supplement B, which provides check boxes corresponding to the 28 qualifying crimes listed in section 101(a)(15)(U)(iii) of the Act, the certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to “Other: Robbery.” In response to Part 3.3, which requests the specific statutory citations for the criminal activity investigated or prosecuted as perpetrated against the Petitioner, the certifying official listed robbery under section 211 of the California Penal Code (Cal. Penal Code). The Supplement B additionally describes the factual basis for the charges, explaining that the Petitioner was robbed at his mini-market by two individuals posing as shoppers. The male perpetrator struck him in his face and stole two 12 packs of beer. The female perpetrator threatened the Petitioner with gang violence if he reported the crime to police. When asked to describe any known or documented injuries to the Petitioner, the Supplement B stated that the Petitioner was struck in the face and threatened with gang violence, causing him significant worry and distress of gang reprisal against him and his family.

The police report from the [redacted] Police Department, submitted with the Petitioner’s U petition, listed the incident type as “Robbery.” The report provides that a male and a female entered the market and posed as customers. The female distracted the Petitioner while the male walked out of the store with beer without paying for it. When the Petitioner followed him out of the store and demanded the beer back, he punched the Petitioner one time in the face. The Petitioner returned to the store and found the female inside, whom he suspected of trying to steal from the cash register, and he locked the female in the store. While waiting for the police to arrive, she threatened him to let her go or she would have some of her “homies” come and shoot him, and the Petitioner let her out of the store. The police officers noted that the Petitioner had swelling and redness on the left side of his face from being punched and that he declined any form of medical treatment. The record reflects that the female perpetrator of the offense was arrested, charged with second degree robbery under section 211 of the Cal. Penal Code, and convicted in 2015.

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 Petitioner's personal statement submitted with his U petition provided that a man and woman entered his store, he saw the man walk out carrying beer that he did not pay for, and he followed him. The Petitioner was unable to retrieve the beer and the man punched him in the face. The Petitioner remembered the woman was still in the store, he went back inside and saw her trying to open the cash register, and he locked her inside the store. The woman got angry and threatened that if he did not let her go, she was going to get her "homies" to shoot him. The Petitioner was scared and let her go because he knew the security camera had her picture. He later helped the police identify her and testified against her during her criminal case. The Petitioner is scared for his and his family's safety because the gangs in his neighborhood are very dangerous, they know where his family lives and that they run the market, and they can attack him or his family any time. Since the robbery, he has been constantly stressed out, suffers from anxiety, and has trouble sleeping. The record contains a 2015 letter from the Petitioner's therapist that indicates he has been receiving psychotherapy to address Post Traumatic Stress Disorder symptoms associated with the death threats and assault by gang members at his place of employment.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. Specifically, the Director determined that the crime committed against him, robbery under section 211 of the Cal. Penal Code, is not a qualifying crime or substantially similar to felonious assault or any other qualifying criminal activity.

On appeal, the Petitioner asserts that he was a victim of qualifying criminal activity or, in the alternative, that robbery under California law is substantially similar to the qualifying crime of felonious assault. He contends that although he was the victim of robbery and this crime is not specifically included in the list of qualifying crimes under 8 C.F.R. § 214.14(a)(9), the robbery in this case is substantially similar to felonious assault under section 245 of the Cal. Penal Code because the punch to the face that he sustained during the robbery constitutes force likely to produce great bodily injury. To support his assertion that he suffered great bodily injury, he provides articles discussing the medical effects resulting from head injuries. He also contends that his assault with a threat to cause serious bodily injury could be considered a felonious assault. He refers to his personal statement that indicated one of the assailants threatened that she was going to get her "homies" to shoot him. The Petitioner also refers to the *U Visa Law Enforcement Resource Guide*² and states that USCIS has previously addressed the circumstances where robbery may be considered a qualifying criminal activity, noting that where the state aggravated robbery statute includes assault with a deadly weapon, assault with a threat to cause serious bodily injury, or otherwise includes what could be considered a felonious assault and law enforcement records of the offense show that such an assault actually occurred, USCIS may determine that aggravated robbery is substantially similar to felonious assault.

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]

² This guide is available at https://www.dhs.gov/sites/default/files/publications/20_1228_uscis_u-visa-law-enforcement-resource-guide.pdf

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. At the outset, in regard to the Petitioner’s argument that the factual circumstances of the crime demonstrate he was the victim of qualifying criminal activity, 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 the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Petitioners must establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity “in violation of Federal, State, or local criminal law.” Sections 101(a)(15)(U)(i)(III), (iii) of the Act; 8 C.F.R. § 214.14(a)(2), (a)(9), (b)(3). While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. *See id.*

Here, the Petitioner has not established that law enforcement actually detected, investigated, or prosecuted a felonious assault as perpetrated against him. Part 3.1 of the Supplement B indicates the Petitioner was the victim of criminal activity involving or similar to “Other: Robbery” and Part 3.3 of the Supplement B lists robbery under section 211 of the Cal. Penal Code as the statutory citation investigated or prosecuted as perpetrated against him. The record indicates that the Petitioner was the victim of a robbery and that as a result of the robbery, he suffered an assault. California law defines assault as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2022). For an assault to be classified as a felony, however, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. *See e.g.*, Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2022) (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults). Neither the Supplement B nor the police report cites to or references any felony-level assault provision under California law as detected, investigated, or prosecuted as perpetrated against the Petitioner or indicates that law enforcement detected or investigated any serious bodily injury or an attempt to cause serious bodily injury during the incident in question.

In these proceedings, 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. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Chawathe*, 25 I&N Dec. at 375. Moreover, 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). 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. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, robbery under California law.

C. Robbery under California Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

As noted by the Director, robbery is not a qualifying crime included in section 101(a)(15)(U)(iii) of the Act. Nonetheless, the Petitioner asserts that robbery under section 211 of the Cal. Penal Code is substantially similar to the qualifying crime of felonious assault. 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. 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).

The Act provides that “any similar activity” to the qualifying crimes may also be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. However, the regulations explicitly define the term “any similar activity” as “offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of qualifying criminal activities.” 8 C.F.R. § 214.14(a)(9); *see also* Interim Rule, 72 Fed. Reg. at 53018 (providing that the definition of “any similar activity” was needed because, and “base[d] . . . on[,] the fact that the statutory list of criminal activity is not composed of specific statutory violations.”).

As noted above, California law defines assault as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240. For an assault to be classified as a felony, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. *See e.g.*, Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults). At the time of the incident, California law defined robbery as “the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211 (West 2013).

We acknowledge that robbery under section 211 of the Cal. Penal Code is a felony offense. However, robbery under California law is otherwise distinct in its elements from California's equivalent to the qualifying crime of felonious assault. Robbery requires a taking of personal property as an element of the offense, which is not required under any of California's felonious assault provisions. Also unlike the felonious assault provisions, robbery does not require the use of a weapon, force likely to produce great bodily injury, or any other aggravating circumstance, and it can be committed "without attempting to inflict violent injury, and without the present ability to do so" *People v. Wolcott*, 665 P.2d 520, 525 (Cal. 1983). Based on the foregoing, the Petitioner has not established the nature and elements of robbery are substantially similar to a felonious assault in California and has not demonstrated that he was a victim of any qualifying crime or "any similar activity" to the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

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 criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.