



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

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

In Re: 21283467

Date: MAR. 22, 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. The matter is now before us on appeal. On appeal, the Petitioner submits a brief asserting that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. 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.<sup>1</sup> 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 Evidence and Procedural History

The Petitioner filed his U petition in April 2016 with a Supplement B signed and certified by a detective in the [REDACTED] Police Department in [REDACTED] 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. In part 3.3, the certifying official listed section 211 of the Cal. Penal 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, "[t]he victim, ([Petitioner]) was in his vending truck when he was approached by two suspects. Suspect #1 produced a handgun and pointed it at the victim. Suspect #2 told him he could not sell in their neighborhood and searched the victim's person for property. Suspect #2 continued to search the truck and found the cash register, he took \$400.00 in cash." The police report accompanying the Supplement B identifies the incident as a robbery. 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 in his vending truck when two suspects entered through the rear entrance of the truck. One of the suspects, "produced a Blu Steel Semi Auto handgun and pointed it at [the Petitioner]," and that the suspects told the Petitioner that he could not sell in their neighborhood and removed \$400 from the Petitioner's cash register. The Petitioner called 911 and informed the arriving police officers of the events that took place, and that he would be able to recognize the suspects if he saw them again. The Petitioner submitted a personal statement that confirms the information in the police report.

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, "[t]he lack of any physical injuries sustained by the applicant in the robbery do not indicate a clear intent to commit serious bodily injury to another, and though there was a firearm involved, a robbery cannot be committed without some fear of bodily injury. There was no unlawful use of force or violence to commit an assault against the petitioner, only the fear of unlawful use of force or violence or the fear of an Assault to commit a Robbery."

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<sup>1</sup> 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.

On appeal, the Petitioner contends that he was the victim of the qualifying crime of felonious assault or that robbery under section 211 of the Cal. Penal Code is substantially similar to the qualifying crime of felonious assault. In support of this assertion, the Petitioner submits an updated Supplement B signed and certified by another detective in the [redacted] Police Department. On the updated Supplement B, the certifying official again 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 section 245 of the Cal. Penal Code, which criminalizes assault with a deadly weapon, as an additional statutory citation investigated or prosecuted. We agree that based on the second Supplement B submitted on appeal, which again checks the box for felonious assault, and cites section 245 of the Cal. Penal Code, further corroborates the narrative provided on the initial Supplement B that the Petitioner was the victim of felonious assault that was detected by the certifying official, 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.” Ca. Penal Code § 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 firearm.” Ca. Penal Code § 245(a)(2) (West 2008).

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 Ca. 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 firearm.” The narrative portion of both of the Supplements B provided, as detected by law enforcement, that the Petitioner was robbed by two men, one of whom held the Petitioner at gun point during the robbery. The police report supported that a gun was used and described that the police identified the type of gun used. The record therefore establishes that a gun 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 Ca. Penal Law § 245(a)(2) as perpetrated against him. We withdraw the Director's prior decision to the contrary.

### III. CONCLUSION

The Petitioner has established that law enforcement detected, investigated, or prosecuted, and he was the victim of, a qualifying crime. 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.