



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

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

In Re: 15843001

Date: MAR. 28, 2022

Appeal of Nebraska Service Center 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). The Director concluded that the record did not establish the Petitioner was the victim of qualifying criminal activity. We review the questions in this matter *de novo*. See *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. 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 in September 2015 stemming from criminal activity that occurred in [] 2014. With the petition he submitted a Supplement B, a personal statement, medical records, a psychological evaluation, letters of support, a news article about the crime against him, documents related to his own criminal history, and civil documents. The Supplement B, certified by the [] [] Arkansas, chief of police, indicated that the Petitioner was the victim of criminal activity that involved or was similar to Other: Armed Robbery, and identified the statutory citation for the crime investigated as 5-12-103, which corresponds to aggravated robbery under the Arkansas criminal code. A police department criminal incident report identified the offense as aggravated robbery and theft of property, the location as highway/road/alley, the weapon force as a firearm, and the weapon used was an automatic/semi-automatic. The form checked “none” for injury to the victim. A narrative of the incident states that the Petitioner stopped his car to help someone he thought needed assistance, but the individual then pulled out a handgun, pressed it against the head of the Petitioner’s companion, and took currency from them. In the Petitioner’s 2015 statement about the incident, he claimed that he was driving with a friend, he stopped his car when someone was waving at him to see if the person needed help, but the man then pulled a gun, took their money, and ran away.

The Director denied the petition, finding that evidence in the record did not establish the Petitioner was the victim of qualifying criminal activity. The Director acknowledged the Petitioner’s contention that the definition of robbery in Arkansas contains the elements of assault and as a felony is similar to felonious assault and that it meets the federal definition of assault in the United States Supreme Court decision *Ladner v. United States*, 358 U.S. 169, 177 (1958) and the Model Penal Code. The Director cited the Arkansas statutes for robbery (5-12-102), aggravated robbery (5-12-103), aggravated assault (5-13-204), first-degree assault (5-13-205), and third-degree assault (5-13-207) but found that although two threshold requirements were met there was no attempt or actual harm or injuries to the Petitioner as a result of the robbery, so evidence submitted did not rise to the level of felonious assault under the Arkansas Penal Code. The Director surmised that the record did not demonstrate that any crime other than robbery occurred. The Director further concluded that as the Petitioner did not establish that he was victim of qualifying criminal activity, as required, he was prevented from meeting other statutory requirements.

B. The Petitioner is Not Victim of a Criminal Activity Substantially Similar to Felonious Assault

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 . . .”).

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 Supplement B and the police department criminal incident report indicate that the investigated criminal activity was aggravated robbery, which is not qualifying criminal activity. Review of the record does not establish that aggravated robbery in Arkansas is substantially similar to the qualifying crime of felonious assault.

On appeal, the Petitioner notes definitions of assault in *Ladner v. United States* and Black’s Law Dictionary referring to the Model Penal Code 211.1(2) to argue that assault is a necessary element to the Arkansas codes for robbery and aggravated robbery, and further contends that under Arkansas law without an assault there would not be robbery or aggravated robbery, but rather theft. He notes that the Director’s decision indicates that two requirements were met to establish the threshold of aggravated robbery but there was no attempt or actual harm. The Petitioner maintains that the statute is disjunctive, meaning that it requires a deadly weapon *or* attempt to harm or cause actual harm to another person. He contends that analyzing aggravated robbery and felonious assault does not necessitate finding that there was an attempt of harm or actual harm, rather assault requires an act causing the apprehension of harm or threat of harm.

At the time of the criminal activity perpetrated against the Petitioner the Arkansas criminal code provided:

§ 5-12-103. Aggravated robbery

- (a) A person commits aggravated robbery if he or she commits robbery as defined in § 5-12-102, and the person:
 - (1) Is armed with a deadly weapon;
 - (2) Represents by word or conduct that he or she is armed with a deadly weapon; or
 - (3) Inflicts or attempts to inflict death or serious physical injury upon another person.
- (b) Aggravated robbery is a Class Y felony.

§ 5-13-204. Aggravated assault

- (a) A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely:
 - (1) Engages in conduct that creates a substantial danger of death or serious physical injury to another person;
 - (2) Displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person; or
 - (3) Impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person.
- (b) Aggravated assault is a Class D felony.

Ark. Code Ann. §§ 5-12-103, 5-13-204 (West 2014).

In finding that aggravated assault is not a lesser-included offense of aggravated robbery, the Arkansas Supreme Court in *Matthews v. State*¹ determined that aggravated assault requires proof of circumstances manifesting extreme indifference to the value of human life, whereas aggravated robbery does not require such proof. The court further concluded that aggravated robbery contains an element of intent to commit theft, which is not required to commit aggravated assault, and that aggravated assault does not consist of an attempt to commit aggravated robbery, or an offense otherwise included within aggravated robbery, such as robbery.

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). This determination does not involve a factual inquiry into the underlying criminal acts, but rather entails comparing the nature and elements of the statutes in question to determine whether crimes are substantially similar. Based on the foregoing, the Petitioner has not established the nature and elements of aggravated robbery are substantially similar to aggravated assault under the Arkansas criminal code and therefore has not demonstrated that he was a victim of any qualifying crime 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, or an offense that is substantially

¹ *Matthews v. State*, 2009 Ark. 321, 319 S.W.3d 266 (2009).

similar to a qualifying criminal activity, he is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.