



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

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

In Re: 21798902

Date: MAY 4, 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 she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief asserting that she 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.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 her U petition in May 2016 with a Supplement B signed and certified by a detective of the [redacted] Detective's Bureau of the [redacted] Sheriff's Department in [redacted] California (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." The certifying official listed "California Penal Code 242: Felonious Assault/Robbery" as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official stated that,

[The Petitioner] was opening the front door of the business while talking to a regular customer. As [the Petitioner] unlocked the front door, two suspects approached her from behind, pushing her into the front lobby. Once inside the lobby, [s]uspect 1 pointed a black handgun at [the Petitioner's] face while yelling [g]ive me the money [lady]! Fearing that she was going to be shot, [the Petitioner] opened the secondary door leading to the safe. Suspect 1 then walked in behind with the handgun pointed to her face. [The Petitioner] then opened the safe. Suspect 1 then took an unknown amount of currency out of the safe. The suspects exited and drove off in [a] black SUV.

When asked to describe any known or documented injury to the Petitioner, the certifying official stated that "[she] was held up at gunpoint by unknown suspects." The [redacted] Sheriff's Department's incident report (incident report) accompanying the Supplement B identified the incident as a "robbery (armed) 211 PC." The narrative portion of the incident report provides further detail about the incident including that one of the suspects, who was wearing a black hoodie covering his entire face, also pointed a gun at another victim who was lying face down on the floor of the lobby. The Petitioner submitted a personal statement that confirmed the information contained in the incident report.

The Director issued a notice of intent to deny (NOID) seeking evidence that the crime listed on the Petitioner's Supplement B was a crime related to one of the qualifying criminal activities listed in the statute and implementing regulations. In response, the Petitioner submitted an updated Supplement B

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.

signed and certified by a different detective with the [redacted] Detective's Bureau Department. On the updated Supplement B, the certifying official again checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." However, the certifying official cited to section 211 (Armed robbery) and section 245(a)(2) (Assault with a firearm) of the California Penal Code (Cal. Penal Code), as additional statutory citations investigated or prosecuted. The descriptions of the criminal activity being investigated or prosecuted and any known or documented injury to the Petitioner largely mirrored those in the initial Supplement B.

After reviewing the evidence in the record, the Director denied the U petition, concluding the Petitioner was not a victim of qualifying criminal activity. Specifically, she determined that law enforcement did not detect, investigate, or prosecute, and the Petitioner was not the victim of, felonious assault under California law because, among other things, "[t]he lack of any physical injuries sustained by the applicant in the robbery d[id] 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."

On appeal, the Petitioner contends that that law enforcement detected, and she was the victim of, a felonious assault based on the evidence in the record.² Alternatively, the Petitioner contends that she was the victim of false imprisonment based on the factual circumstances of the offense.³

B. The Petitioner Is the Victim of Qualifying Criminal Activity

The Act requires U petitioners to demonstrate 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 (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, assault in California was defined as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. Cal. Penal Code § 240 (West

² Specifically, the Petitioner asserts that the Director failed to follow the "any credible evidence" standard at section 214(p) of the Act and USCIS' Interim Rule directing the agency to broadly interpret the categories of qualifying crimes and give greater weight to the certifying agency's determination on the Supplements B regarding the qualifying criminal activity.

³ As the Petitioner has demonstrated that law enforcement detected, and she is the victim of, the qualifying crime of felonious assault, we will not further address her arguments regarding false imprisonment in the decision.

2008). Section 245(a) of the California Penal Code describes various assault offenses that are punishable as felonies due to the presence of aggravating factors, including when an assault is committed with a firearm under subsection (a)(2), as is the case here. *See* Cal. Penal Code § 245(a)(2) (West 2022) (“Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars . . . and imprisonment”). Contrary to the Director’s finding, California law does not require a specific intent to cause serious bodily injury or a subjective awareness of the risk that an injury might occur to find that an assault has occurred, and instead, only requires an intentional act and actual knowledge of facts sufficient to show that the act by its nature “will probably and directly” result in the application of physical force against another person. *People v. Williams*, 26 Cal. 4th 779, 790 (2001); *People v. Golde*, 77 Cal. Rptr. 3d 120, 127 (2008). Furthermore, the certifying official consistently indicated that criminal activity involving or similar to felonious assault had been investigated or prosecuted as perpetrated against the Petitioner on both Supplements B submitted before the Director. Additionally, in the updated Supplement B submitted in response to the NOID, the certifying official clarified that an assault with a firearm, a felony, under section 245(a)(2) of the California Penal Code, was among the criminal activities that were investigated as perpetrated against the Petitioner, and again reiterated the same in describing the criminal activity at part 3.6. Consistent with this citation, the narrative portions of both Supplements B provided, as detected by law enforcement, that the Petitioner was held at gunpoint during a robbery. While the incident report identified the crime perpetrated as an armed robbery, it also reflected that a gun was used and described the type of gun used, consistent with assault with a firearm under California law. 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 Cal. Penal Code section 245(a)(2) as perpetrated against her. We withdraw the Director’s prior decision to the contrary.

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 the petitioner is a victim of qualifying criminal activity. As the Petitioner has overcome the Director’s determination and established that she is the victim of qualifying criminal activity, we remand the matter to the Director to determine in the first instance whether she has satisfied the remaining criteria at section 101(a)(15)(U)(i) of the Act.

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