U.S. Citizenship and Immigration Services

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

In Re: 22739470

Date: NOV. 30, 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 matter is now before us on appeal. On appeal, the Petitioner asserts her eligibility for U nonimmigrant status. 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

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

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). Parents and unmarried siblings under the age of 18 of a direct victim, who was under 21 years of age at the time the qualifying criminal activity occurred, will also be considered victims if the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and is unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i). "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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and petitioners bear the burden of proof 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)(1),(4); *Matter of Chawathe*, 25 I&N

Dec. 369, 375 (AAO 2010). As a part of meeting this burden, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

The Petitioner filed her U petition in January 2015 with a Supplement B, signed in October 2014, certifying that in [redacted] 2012, she was the victim of burglary and assault. The Supplement B was certified by a district attorney for the [redacted] Circuit Court in [redacted] Oregon (certifying official). The certifying official checked a box in Part 3.1 to indicate that the Petitioner was the victim of criminal activity involving or similar to "burglary, assault" and related crimes. When asked to provide the specific statutory citations investigated or prosecuted in Part 3.3, the Supplement B listed sections 164.225 (burglary in the first degree), 164.395 (robbery in the third degree), 163.160 (assault in the fourth degree), and 163.043 (theft in the third degree) of the Oregon Revised Statutes Annotated (Or. Rev. Stat.). When describing the criminal activity being investigated or prosecuted, the Supplement B indicated that the Petitioner had been at home when a man entered her daughter's bedroom and that burglary, robbery, assault, and theft were the "criminal activity being investigated and/or prosecuted." The Supplement B additionally indicated that the Petitioner's son had also been present during the incident and was injured by the perpetrator.

The Petitioner also provided a second Supplement B in March 2019 signed by the same certifying official. The second Supplement B indicated the criminal activity as felonious assault along with the same statutory citations as the first Supplement B. Additionally, the second Supplement B indicated that the Petitioner had suffered trauma and post-traumatic stress disorder.

The Director denied the U petition. The Director found that burglary, robbery, theft, and misdemeanor-level assault were not enumerated qualifying criminal activities under 8 C.F.R. § 214.14(a)(9). Although the Director acknowledged the second Supplement B indicating that the Petitioner was a victim of felonious assault, which would constitute qualifying criminal activity, the Director concluded that this claim was not supported by the record. Additionally, the Director determined that the record did not reflect that the criminal activity of which the Petitioner had been the victim was substantially similar to qualifying criminal activity according to the Act and regulation. Specifically, the Director found that the crimes indicated as detected, investigated, or prosecuted in the Supplement B were not substantially similar to felonious assault. Finally, the Director concluded that the evidence did not establish that the Petitioner was a direct victim of assault, rather the assault had been perpetrated against the Petitioner's son, and that the Petitioner did not qualify as an "indirect victim" according to 8 C.F.R. § 214.14(a)(14).

On appeal, the Petitioner asserts, through counsel, that the evidence in her case shows that she was a victim of qualifying criminal activity. We find that the Petitioner has not overcome the reasons for the Director's denial to show that she was a victim of a qualifying crime according to section 101(a)(15)(U)(iii) of the Act.

A. The Certifying Agency Did Not Detect Felonious Assault 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] 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 . . . .").

The Petitioner contends on appeal that the Supplement B was certified to show that she was the victim of criminal activity involving felonious assault and other crimes. We acknowledge that in part 3.1 of 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." However, a certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Here, the Supplement B, when read as a whole and in conjunction with other relevant evidence in the record, does not establish, by a preponderance of the evidence, that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *See* section 214(p)(4) of the Act (stating that, in acting on petitions for U nonimmigrant status, the agency "shall consider any credible evidence relevant to the petition"); 8 C.F.R. § 214.14(c)(4) (stating that the burden "shall be on the petitioner to demonstrate eligibility" and that "USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B"). Both versions of the Supplement B indicate four separate statutory citations for the detected crimes, none of which indicate a felonious assault. Rather, the cited assault is a misdemeanor under 163.160 (assault in the fourth degree) of the Or. Rev. Stat. Furthermore, neither version of the Supplement B nor the arrest report contains a narrative establishing that the certifying agency actually detected, investigated, or prosecuted an assault as perpetrated against the Petitioner. Rather, they describe a simple assault as perpetrated against the Petitioner's son while the perpetrator entered their home.

Although we do not diminish the harm the Petitioner suffered as a result of the criminal activity perpetrated against her and her family, 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 eligibility absent evidence that law enforcement actually detected, investigated, or prosecuted a qualifying crime as perpetrated against the Petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5).

B. The Petitioner Is Not the Victim of a Crime Substantially Similar to the Qualifying Crime of Felonious Assault

As stated above, to qualify as a victim for U-1 classification, petitioners must establish that the crime detected, investigated, or prosecuted as perpetrated against them, and of which they are victim, is a qualifying crime or is substantially similar to the qualifying crime. 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 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). 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. *Id.* 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. *See also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner). 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 Petitioner alternatively argues on appeal that the nature and elements of the criminal offense of which she was a victim is substantially similar to felonious assault under section 101(a)(15)(U)(iii). The record shows that first-degree burglary under section 164.225 of the Or. Rev. Stat. was detected as perpetrated against the Petitioner. The Petitioner contends that because this statute requires the "threat or use of physical force upon another" and involves recklessly or intentionally causing injury to another in the course of a robbery, it is substantially similar to both felonious assault in Oregon under 163.165 of the Or. Rev. Stat. (third-degree assault) as well as aggravated assault under section 211.1(2) of the Model Penal Code, which she contends also includes attempting to cause serious bodily injury. She asserts that the burglary statute in her case requires a showing that the perpetrator has caused or attempted to cause physical injury to any person. Further, the Petitioner contends that, in denying her U petition, the Director applied a "virtually identical" standard rather than "substantially similar" as contemplated in 8 C.F.R. § 214.14(a)(9) and USCIS should instead apply a broad interpretation according to Interim Rule, 72 Fed. Reg. 53014.

At the time of the criminal incident in question, the felonious assault statute which the Petitioner argues is substantially similar to the detected crime in her case, required reckless, intentional, or knowing

causation of serious injury to another person which could take place in a variety of situations. Section 163.165 of the Or. Rev. Stat. read, in pertinent part, as follows:

> (1) A person commits the crime of assault in the third degree if the person:
>
> (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon; [or]
>
> (b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life; [or]
>
> (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life. . . .

(O.R.S. 163.165, West 2012). In addition, section 211.1(2) of the Model Penal code defined aggravated assault, when charged as a felony, in pertinent part as "attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life". (West 2022).

Conversely, when the crime was perpetrated against the Petitioner in 2012, section 164.225 of the Or. Rev. Stat. defined burglary in the first degree, in pertinent part, as follows:

> (1) A person commits the crime of burglary in the first degree if the person violates ORS 164.215 and the building is a dwelling, or if in effecting entry or while in a building or in immediate flight therefrom the person:
>
> (a) Is armed with a burglary tool or theft device as defined in ORS 164.235 or a deadly weapon;
>
> (b) Causes or attempts to cause physical injury to any person; or
>
> (c) Uses or threatens to use a dangerous weapon.

(West 2012). Contrary to the Petitioner's argument on appeal, the burglary statute in this case does not require a showing of physical injury, unlike section 163.165 of the Or. Rev. Stat. The burglary statute at issue also does not require an attempt to cause serious bodily injury as in section 211.1(2) of the Model Penal code. Indeed, the disjunctive phrasing indicates that the causation of physical injury, or attempt to do so, is one of several scenarios that could give rise to a burglary under section 164.225 of the Or. Rev. Stat., including an armed individual entering an empty building without injuring another person. Furthermore, unlike first-degree burglary under section 164.225 of the Or. Rev. Stat., neither felonious assault under the Or. Rev. Stat. section 163.165 nor section 211.1(2) of the Model Penal Code require the element of larceny.

While portions of burglary may, in certain circumstances, overlap with the state's equivalent to the qualifying crime of felonious assault, the regulations require more—specifically, substantial

similarities in both the nature and the elements of the specific offenses in question. 8 C.F.R. § 214.14(a)(9); *see also* Black's Law Dictionary (11th ed. 2019) (defining "nature" as the "essence of something," while defining "elements of a crime" as the "constituent parts of a crime . . . that the prosecution must prove to sustain a conviction"). Here, the nature and elements of first-degree burglary under section 164.225 of the O.R.S., the statute detected by law enforcement as perpetrated against the Petitioner, are not substantially similar to a felonious assault under O.R.S. 163.165, as asserted on appeal. Accordingly, the Petitioner has not met her burden of establishing, by a preponderance of the evidence, that she is the victim of qualifying criminal activity.

The Petitioner also argues on appeal that she was the victim of an assault because of the factual circumstances of the criminal activity perpetrated against herself and her family rendered it felonious; however, an inquiry into whether the two offenses are substantially similar is not fact-based, but rather entails comparing the nature and elements of the statutes in question. 8 C.F.R. § 214.14(a)(9). Here, as discussed, the nature and elements of the criminal activity detected as perpetrated against the Petitioner are not substantially similar to those of the qualifying crime of felonious assault.

C. The Petitioner Is Not a Victim of Qualifying Criminal Activity under 8 C.F.R. § 214.14(a)(14)(i)

As stated above, parents of a direct victim who was under 21 years of age at the time the qualifying criminal activity occurred will also be considered victims of qualifying criminal activity under section 101(a)(15)(U)(i) of the Act, if the direct victim is incompetent or incapacitated and unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i). The age of the victim when the qualifying criminal activity occurred is the applicable age in determining eligibility under this definition. See 8 C.F.R. § 214.14(a)(14)(i) (providing that, "[f]or purposes of determining eligibility under this definition, USCIS considers the age of the victim at the time the qualifying criminal activity occurred").

Neither the Act nor the regulations define "incapacitated" or "incompetent." However, the referenced statutory provisions relating to possession of information and helpfulness, along with the related regulations, presume a victim's incapacity where they are under 16 years of age, and in such instances, authorize a parent, guardian, or next friend of the victim to possess the requisite information regarding a qualifying crime and provide the required assistance to law enforcement on behalf of the victim. Sections 101(a)(15)(U)(i)(II) and (III) of the Act; 8 C.F.R. § 214.14(b)(2), (3).

On appeal, the Petitioner additionally argues that she can be considered a direct victim as she was the parent of a direct victim who was under 21 years of age, and that the Director erred in determining that her son was not incapacitated or incompetent as a result of the qualifying criminal activity. We acknowledge that the Petitioner's son was 17 years old, and therefore a minor, at the time of the crime. However, as a threshold matter, as discussed, the record indicates identified assault in this case is a misdemeanor, rather than a felony. Although the Petitioner argues on appeal that it can be charged as a felony under certain circumstances, as noted above, 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 eligibility absent evidence that law enforcement actually detected, investigated, or prosecuted a qualifying crime as perpetrated against the Petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5).

Furthermore, even assuming *arguendo* that the Petitioner's son was a victim of felonious assault or other qualifying criminal activity, contrary to the assertions of counsel on appeal, the record does not otherwise indicate that her son lacked any mental and emotional capacity to provide necessary information. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (finding that counsel's statements must be substantiated in the record with independence evidence, which may include affidavits and declarations). Indeed, the first Supplement B indicates that the Petitioner's son was "not cooperative later in the case". The second Supplement B indicated that the Petitioner's son answered the police's questions and provided detailed descriptions of the incident. The record therefore does not demonstrate that Petitioner's son was incompetent or incapacitated and unable to provide information concerning the criminal activity or be helpful in the prosecution of the crime. Accordingly, the Petitioner has not established by a preponderance of the evidence that she was an indirect victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i).

## III. CONCLUSION

The record shows that the Petitioner was the unfortunate victim of burglary. However, she has not met her burden of proof to establish, by a preponderance of the evidence, that she is the victim of qualifying criminal activity or criminal activity substantially similar to a qualifying crime under section 101(a)(15)(U)(iii) of the Act. 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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

**ORDER:** The appeal is dismissed.