



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

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

In Re: 23981655

Date: JAN. 12, 2023

Appeal of Vermont 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner was not the victim of a qualifying crime, and therefore, did not meet the remaining eligibility criteria for classification as a U nonimmigrant. On appeal, the Petitioner submits additional evidence and asserts that the Director erred by not considering her a victim of criminal activity equivalent to felonious assault. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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).

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 March 2016 with a Supplement B signed and certified by a lieutenant in the [] Police Bureau in [] Oregon (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felony Assault," and "Other: Robbery." The certifying official cited to section 164.395 (robbery in the third degree)² of the Oregon Revised Statutes Annotated (Or. Rev. Stat. Ann.) 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 indicated that "property was taken by force by 2 or 3 perpetrators. She was pushed and was also punched in the face when she tried to resist them from taking her purse." The police report (a combined incident report and a non-connect special report) accompanying the Supplement B identifies the incident as a strong-arm robbery. The police report also contains a case narrative which does not mirror the information in the Supplement B, noting that officers responded to the scene upon the report of a robbery and listing the crime investigated as a "robbery-not armed." The police report states that the Petitioner was at the bus stop when 2 to 3 individuals walked up behind her, pushed her, and took her purse. The police report does not state that the Petitioner was punched in the face.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity. The Director noted that robbery is not a qualifying crime and determined that the Petitioner had not established that the nature and elements of robbery under Oregon law are substantially similar to a qualifying criminal activity. On appeal, the Petitioner argues the Director erred in determining she was not the victim of the qualifying crime of felony assault because the certifying official indicated on the Supplement B that felony assault was investigated or prosecuted. The Petitioner also argues that robbery in the third degree under Oregon law is substantially similar to the qualifying crime of felony assault. These arguments are unavailing.

¹ The Supplement B also provides 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.

² At the time the criminal activity was committed against the Petitioner, Oregon law did not have a provision for robbery in the third degree. In 2003, approximately two years after this incident occurred, the Oregon legislature enacted Or. Rev. Stat. Ann. § 164.395.

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] 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 her burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. We acknowledge that the certifying official checked the box on the Supplement B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault. However, the certifying official cited to robbery in the third degree under Oregon law. Moreover, the Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (providing 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”).

Beyond the checked box for felonious assault, the certifying official did not reference the crime of felonious assault as perpetrated against the Petitioner elsewhere in the Supplement B. Fourteen years after the incident, the certifying official described the injury to the Petitioner as one where the Petitioner “suffered substantial pain and suffered substantial emotional and mental harm during the assault and strong armed robbery.” However, there is a distinction between assault and assault of a felonious nature. The accompanying police report, produced shortly after the criminal activity occurred, did not identify any type of assault as perpetrated against the Petitioner; instead, it identified the offense committed as strong-arm robbery. The narrative section of the police report likewise did not reference any assault under Oregon law; it described officers responding to a report of a robbery. As a result, and as outlined in the Director’s decision, the Supplement B’s checked box for felonious assault is inconsistent with the information outlined in the remainder of the document and with the police report, which served as the basis for the certification of the Supplement B. The Petitioner has not concretely addressed or submitted any additional evidence relevant to these inconsistencies or otherwise establishing that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against her after initially classifying and describing the offense as a robbery. The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she 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, or any other qualifying criminal activity as perpetrated against her. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and she was the victim of, robbery in the third degree.

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

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 (stating 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 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 in the third degree under section 164.395 of the Or. Rev. Stat. Ann. is substantially similar to the qualifying crime of felonious assault. Oregon has three felony level assault statutes: assault in the third degree (Or. Rev. Stat. Ann. § 163.165), assault in the second degree (Or. Rev. Stat. Ann. § 163.175), and assault in the first degree (Or. Rev. Stat. Ann. § 163.185). Thus, the nature and elements of the robbery offense must be substantially similar to one of these assault statutes. Or. Rev. Stat. Ann. § 164.395 robbery in the third degree states:

(1) A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft...[] the person uses or threatens the immediate use of physical force upon another person with the intent of:

(a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or

(b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft...[].

Robbery in the third degree involves taking personal property from a person through the use or threatened use of physical force. The pertinent sections of the least severe felonious assault statute, (Or. Rev. Stat. Ann. § 163.165 assault in the third degree), involves serious physical injury by means of a deadly or dangerous weapon; or while being aided by another person actually present,

intentionally, or knowingly causes physical injury to another.³ The statute for robbery in the third degree does not include these elements.

We acknowledge that robbery in the third degree in Oregon is a felony. However, robbery is otherwise distinct in its elements from Oregon's equivalents to the qualifying crime of felonious assault. Robbery requires a taking of personal property as a required element of the offense, which is not required under Oregon'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. Based on the foregoing, the Petitioner has not established that the nature and elements of robbery are substantially similar to a felonious assault under Oregon law.

D. The Remaining Eligibility Criteria for U 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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy any of these criteria at section 101(a)(15)(U)(i) of the Act. Therefore, the U petition remains denied.

ORDER: The appeal is dismissed.

³ Or. Rev. Stat. Ann. § 163. 175 (1) states that a person commits the crime of assault in the second degree if the person: (a) Intentionally or knowingly causes serious physical injury to another; (b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or (c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life. While Or. Rev. Stat. Ann. § 163. 185 (1)(a) states that a person commits the crime of assault in the first degree if the person: Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon.