



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

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

In Re: 24461964

Date: JAN. 17, 2023

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 (Director) 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. Subsequently, the Director denied a motion to reopen. The matter is now before us on appeal. On appeal, the Petitioner asserts that she was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. 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 withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

**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, 375-76 (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

The Petitioner filed her U petition in January 2016 with a Supplement B signed and certified by an assistant district attorney at the [REDACTED] District Attorney's Office (certifying official). The certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." The certifying official listed California Penal Code (Cal. Penal Code) sections 211, 212.5/664 and 245(a)(1), which are the statutory provisions for Robbery in the Second Degree, Attempted First Degree Robbery, and Assault with a Deadly Weapon respectively, as the specific statutes investigated or prosecuted as perpetrated against the Petitioner. When describing the criminal activity being investigated or prosecuted, the certifying official wrote, "[the Petitioner] was a victim of first degree residential robbery inside an inhabited dwelling and of felonious assault . . . ." Under the section requiring a description of any known or documented injuries, the certifying official wrote, "...[w]hen the assailant entered the home, [the Petitioner] was held by the neck by the assailant, suffocating her, and leaving marks on her neck."

In December 2021, the Director issued a request for evidence (RFE), providing the Petitioner an opportunity to submit evidence of qualifying criminal activity. In addition, the Director noted that the police report indicated that the crime being investigated was residential burglary, and the court documents showed that the perpetrator was charged with attempted first degree residential burglary.<sup>1</sup> In response to the RFE, the Petitioner provided, among other things, copies of previously submitted court documents, a police report, a letter from an attorney arguing that "forcible taking" is similar to felonious assault when the force is likely to cause great bodily injury, copies of relevant statutes, and a 2017 mental health evaluation of the Petitioner.

In April 2022, the Director denied the U petition concluding that the Petitioner did not establish that she was a victim of qualifying criminal activity because the crimes investigated and/or prosecuted were residential burglary and first degree residential robbery, neither of which constituted qualifying criminal activity. The Director examined the felonious assault statutes under California law and determined that the nature and elements of residential robbery were not substantially similar to felony assault under California law. Moreover, the Director noted the listing of Assault with a Deadly Weapon on the Supplement B was not supported by the record.

On appeal, the Petitioner submits an updated Supplement B from the same certifying official who now lists Cal. Penal Code sections 211, 212.5/664 and 245(a)(4);<sup>2</sup> a letter from the same certifying official

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<sup>1</sup> The Director erred because the perpetrator was charged with first degree residential robbery.

<sup>2</sup> Cal. Penal Code section 245(a)(4) is the statutory provision for Assault By Any Means of Force Likely to Produce Great Bodily Injury.

Attorney explaining that Cal. Penal Code section 245(a)(1) was listed in error and section 245(a)(4) of the Cal. Penal Code should have been listed instead; copies of relevant statutes; an additional police report; and a brief arguing that she has established eligibility for the benefit sought.

Considering the updated Supplement B, the letter from the certifying official and the additional police report among other documents submitted on appeal, we find it appropriate to remand the matter for the Director to determine in the first instance if the Petitioner has established that she is the victim of qualifying criminal activity and whether she has satisfied the remaining criteria at section 101(a)(15)(U)(i) of the Act.

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