



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

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

In Re: 25966909

Date: JUNE 7, 2023

Motion on Administrative Appeals Office 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), as a victim of qualifying criminal activity. 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 he was the victim of a qualifying crime, suffered substantial physical or mental abuse as a result of a qualifying criminal crime, or was helpful in the investigation or prosecution of a qualified crime as required. We summarily dismissed the Petitioner’s subsequent appeal as we did not receive a supporting brief and the appeal did not otherwise specify an erroneous conclusion of law or statement of fact in the unfavorable decision. The matter is now before us on a motion to reopen and reconsider. On motion, the Applicant submits a brief, contests and overcomes our prior summary dismissal, and contends that he has established eligibility for the benefit sought. 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). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* at § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

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.*

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 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.¹ 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

A. Relevant Facts and History

The Petitioner filed his U petition in 2016 with a Supplement B signed and certified in June 2016 by a sergeant in the [REDACTED] Texas Police Department (certifying official). The certifying official indicated that in 2016, the Petitioner was the victim of criminal activity involving or similar to “Felony Assault.” In Part 3.3. of the Supplement B, the certifying official indicated that “aggravated robbery” was the specific crime investigated or prosecuted. When asked to provide a description of the criminal activity, the certifying official stated that “[w]hile working at business, victim and other employee were robbed at gunpoint. Suspects have been apprehended for other cases but detectives are still working to charge them with incident as well.” The Supplement B did not indicate that the Petitioner sustained any injuries during the incident. The Petitioner did not submit a police report.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity or that he had been helpful, is being helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the criminal activity upon which his petition is based.² The Director highlighted that the while the Petitioner submitted a psychological evaluation, the Petitioner did not submit evidence showing that he participated in any continued counseling, as recommended, and the record did not indicate that he received medical or psychological treatments in the years since the criminal activity occurred. The Director further highlighted that, although the Petitioner submitted a Supplement B indicating that he possessed information regarding, and was, is, or would be helpful in the investigation or prosecution of the armed robbery committed against him, the Supplement B did not cite to specific statutory citation that was investigated or prosecuted and the Petitioner did not submit a police report.

B. Qualifying Criminal Activity

On appeal, the Petitioner asserts that he has submitted sufficient evidence to establish that he was the

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.

² The Director additionally highlighted that the Petitioner did not submit evidence of “all entries and exits to and from the United States since [his] initial entry[.]” but did not explain specifically why such evidence was necessary or what specific eligibility criterium for U nonimmigrant such evidence was relevant to.

victim of qualifying criminal activity investigated or prosecuted by law enforcement and submits a copy of an email from the [redacted] Texas Police Department stating that the police records related to the aggravated robbery committed against him are confidential and cannot be released because the suspect was a juvenile.

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 . . .”).

Section 22.01 of the Texas Penal Code (Tex. Penal Code Ann.) provides that a person commits misdemeanor assault if he or she:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person’s spouse;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person’s spouse; or
- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Tex. Penal Code Ann. § 22.01 (West 2023).

To rise to the level of a felony, section 22.02 of the Tex. Penal Code Ann. requires, in pertinent part, an underlying assault and the use or exhibit a deadly weapon during the commission of it. Id. at § 22.02.

In the present case, the Petitioner submitted a Supplement B indicating that he was the victim of criminal activity involving or similar to “Felony Assault.” In addition, the narrative portion of the Supplement B indicated that, as detected by law enforcement, the Petitioner was held at gunpoint during the course of a robbery. As noted above, assault under Texas law occurs when a person intentionally or knowingly threatens another with imminent bodily injury, and assault rises to the level of felony assault when there is an aggravating factor, such as the use of a deadly weapon. Here, the Petitioner was the victim of robbery, with the aggravating factor of use of a deadly weapon, and he was held at gunpoint which indicates that he was intentionally threatened with imminent bodily

injury. Although the Petitioner did not submit a police report, a police report is not required evidence and, on appeal, the Petitioner has submitted evidence from the [] Texas Police Department explaining why a police report was not submitted. Regardless, and on the basis of the above, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that law enforcement detected felonious assault as defined under Texas law as perpetrated against him. Despite this determination, however, the Petitioner has not established his eligibility for U nonimmigrant status, as explained below.

C. The Petitioner Did Not Suffer Substantial Physical and Mental Abuse as a Result of the Qualifying Criminal Activity

The Act and regulations provide that a petitioner is eligible for U-1 nonimmigrant status if he demonstrates, inter alia, that he has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(1) of the Act; 8 C.F.R. § 214.14(b)(1). The regulations provide that the determination of whether a petitioner has suffered substantial abuse is based on a number of factors, including but not limited to:

The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

8 C.F.R. § 214.14(b)(1).

In his declaration, the Petitioner stated the following with respect to circumstances and aftermath of the incident:

[T]wo masked men entered the store screaming and both pointed guns towards me and my coworker. Both robbers jumped over the counter and one of them pointed a gun to the back of my head and pushed it into the back of my head; the robber used the gun to push me to where he wanted me to stand I feared for my life. I truly thought I was going to die. . . . After the incident, I was shocked and now I live in a constant state of fear. I find it very hard to fall asleep at night because I know I will get nightmares of the incident. I have lively dreams of someone punching and kicking me, of someone screaming at me while holding a gun to my head and firing it After the assault, it was hard for me to eat I do not like to leave my house because I'm constantly paranoid that my attackers will see me and attack me again I am currently seeing a psychotherapist who has been helping me work through my traumatic situation, but I still get very scared. After my incident I took two weeks off of work. Every time I go to work, I am scared

