



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

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

In Re: 27102143

Date: JUNE 8, 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 denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she was a victim of qualifying criminal activity. The Director subsequently dismissed the Petitioner’s combined motion to reopen and reconsider. On appeal, the Petitioner submits a brief and a mental health assessment and contends that she is eligible 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). 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

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). “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 C.F.R. § 214.14(c)(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.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 Procedural History

In May 2017, the Petitioner filed her U petition with a Supplement B signed and certified by a Sergeant of Police for the [redacted] Illinois Police Department (certifying official). The certifying official did not check any of the boxes pertaining to qualifying criminal activities under Part 3.1, and instead, notated that the Petitioner was the victim of criminal activity involving or similar to “Robbery/Strong Arm” and cited to section 5/18-1 of chapter 720 of the Illinois Compiled Statutes Annotated (ILCS) 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: “Per report: Offender grabbed a bank bag of USC from [the Petitioner] and pushed her to the ground.” Regarding known or documented injury to the Petitioner, the certifying official stated “Per report: medical attention refused.” The police report accompanying the Supplement B classified the incident as “Robbery - Strong Arm - No Weapon.”

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity or criminal activity substantially similar to a qualifying crime. On appeal, the Petitioner contends that she was a victim of an aggravated battery and said crime under Illinois law is substantially similar to the qualifying crime of felonious assault. The record does not support this contention.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute Criminal Activity Involving or Substantially Similar to 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

¹The 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.

(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 . . .”).

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. 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 at section 101(a)(15)(U)(iii) of the Act 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). 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. 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 crime certified on the Supplement B is robbery pursuant to 720 ILCS 5/18-1. Because robbery is not specifically listed as qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act, the Petitioner must establish that its nature and elements are substantially similar to a qualifying crime. 8 C.F.R. § 214.14(a)(9). This determination entails comparing the nature and elements of the investigated crime with a statutorily enumerated crime.

On appeal, the Petitioner contends that she was a victim of an aggravated battery and said crime under Illinois law is substantially similar to the qualifying crime of felonious assault. In support of her contention, she explains that she was “physically assaulted” in “a public place of accommodation” as detailed in 720 ILCS 5/12-3.05, namely, the parking lot of a bank, and she “received physical injuries (a broken finger) and long-lasting mental trauma.”²

We adopt and affirm the Director’s decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of

² A battery, pursuant to 720 ILCS 5/12-3, is committed when a person “knowingly without legal justification by any means . . . causes bodily harm to an individual or . . . makes physical contact of an insulting or provoking nature with an individual.” Battery is a misdemeanor and therefore, even if it was detected by law enforcement, it is not Illinois’s equivalent to the qualifying crime of felony assault. *See id.* Aggravating factors such as the infliction of great bodily harm or injury, the use of a firearm, causing harm to certain classes of people, and committing the offense in certain locations may elevate a battery to a felony under Illinois law. *See* 720 ILCS 5/12-3.05 (setting forth the classifications and sentences for aggravated battery). As noted by the Director, an essential element of aggravated battery under Illinois law is the infliction of “great bodily harm.”

Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case.”) As we detailed above, while qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. The Petitioner focuses on the facts of the crime, but the proper inquiry is whether the nature and elements of the crime certified on the Supplement B, namely robbery under 720 ILCS 5/18-1, are substantially similar to a qualifying crime. The nature and elements of robbery under 720 ILCS 5/18-1 are not substantially similar to aggravated battery under 720 ILCS 5/12-3.05. Robbery involves taking property from another through the use or threat of force. It does not require a battery against the victim. Nor does it involve any of the aggravating factors listed for aggravated battery under 720 ILCS 5/12-3.05. The Petitioner has not demonstrated on appeal that she is the victim of qualifying criminal activity or substantially similar activity, as section 101(a)(15)(U)(iii) of the Act requires.

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 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.