



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

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

In Re: 25965891

Date: MAY 15, 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), 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 that he was a victim of the qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner 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). 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. 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 the District Attorney for [REDACTED] County, Pennsylvania (certifying official). The certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to “Extortion,” “Attempt,” and “Other: Robbery.” In Part 3.3. of the Supplement B, the certifying official listed section 3701 of the Pennsylvania Consolidated Statutes (Pa. Cons. Stat.), which defines the offense of robbery, as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity, the certifying official stated that the Petitioner was “a victim of robbery. [The Petitioner] was working at the Sunoco store at [address omitted], when a male walked in the store and said, ‘I have a gun, give me money.’ [The Petitioner] anxiously managed to open his cash counter and put the cash tray on the counter. His perpetrator grabbed all the bills and left the store.” The police report accompanying the Supplement B classified the incident as “robbery – with strong arm.”² The record indicates that the perpetrator implied that he had a weapon but no weapon was found upon his person at the time of arrest. Neither the Supplement B nor the police report indicated that the Petitioner sustained any injuries during the criminal activity.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Director determined that although the Petitioner claimed that he was a victim of theft by extortion, the elements of the crime against him did not include any of the elements of theft by extortion under section 3923 of the Pa. Cons. Stat. The Director also determined that although the Petitioner claimed that robbery is substantially similar to felonious assault, there was no other evidence in the record indicating that law enforcement detected, investigated, or prosecuted felonious assault perpetrated against the Petitioner; in this regard, the certifying official provided only the statutory citation for robbery under Pennsylvania law, a fact that was supported by information contained in the accompanying police report. The Director then concluded that robbery is not a qualifying crime under the Act and is not substantially similar to any qualifying crime.

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 Strong-arm robbery is when there is a robbery but the defendant does not use a deadly weapon.

On appeal, the Petitioner asserts that the Director erred in concluding that he did not establish that robbery is substantially similar to felonious assault and that the elements of the crime perpetrated against him did not include the elements of theft by extortion.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

The Act requires U petitioners to demonstrate their helpfulness 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 his burden of establishing by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. With regard to the Petitioner’s contention that the factual circumstances of the crime establish that he was the victim of both extortion and felonious assault, evidence of 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 a petitioner’s eligibility absent evidence that the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Petitioners must establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity “in violation of Federal, State, or local criminal law.” Sections 101(a)(15)(U)(i)(III), (iii) of the Act; 8 C.F.R. § 214.14(a)(2), (a)(9), (b)(3). 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. *Id.* Here, the Petitioner has not established that law enforcement actually detected, investigated, or prosecuted extortion and felonious assault as perpetrated against him.

C. Robbery Under Pennsylvania Law is Not Substantially Similar to the Qualifying Crimes of Felonious Assault or Extortion

The Petitioner contends that he was the victim of qualifying criminal activity because the elements of robbery are substantially similar to the qualifying crimes of felonious assault and extortion under Pennsylvania law. He also maintains that that he suffered extensive psychological injury as a result of the crime, including major depressive disorder, panic disorder, and post-traumatic stress disorder.

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).

Under Pennsylvania law, “a person is guilty of robbery if, in the course of committing a theft, he: (i) inflicts serious bodily injury upon another; (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury; (iii) commits or threatens immediately to commit any felony of the first or second degree; [or] (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury.” 18 Pa. Cons. Stat. § 3701.

For an assault to be classified as a felony under Pennsylvania law, there must be an aggravating factor present. At the time of the offense against the Petitioner, Pennsylvania law defined aggravated assault, under section 2701(2) of the Pa. Cons. Stat., in pertinent part, as an attempt to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life, or attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. “Serious bodily injury” refers to bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.³

As noted above, robbery under section 3701 of the Pa. Cons. Stat. does not require an underlying assault or the infliction or attempted infliction of serious bodily injury; instead, the statute for robbery is phrased in the disjunctive, providing that a taking may be accomplished by multiple, distinct means, some of which involve an underlying assault, and some of which do not. Here, the record reflects that the robbery was accomplished by the perpetrator implying that he had a gun when he was, in fact, unarmed. While we do not question the lasting emotional impact the Petitioner describes feeling during, and as a result of, the incident, the evidence in the record does not reflect that the perpetrator attempted to cause serious bodily injury to the Petitioner or indicate the presence of any aggravating factor under section 2701(2) of the Pa. Cons. Stat. Therefore, the Petitioner has not established by a

³ Section 2602 of the Pa. Cons. Stat.

reponderance of the evidence that robbery under Pennsylvania law is substantially similar to the state equivalent to felonious assault.⁴

The Petitioner contends that he has established he was the victim of the qualifying crime of extortion because the certifying official signed and certified a Supplement B indicating that the crime of extortion was detected, investigated, or prosecuted. We acknowledge that in part 3.1 of the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to “Extortion.” 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). In part 3.3, the certifying official cited to robbery under section 3701 of the Pa. Cons. Stat. as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner; he did not cite to any provision involving extortion under Pennsylvania law. Moreover, the remaining evidence in the record does not reference any extortion provisions under Pennsylvania law or otherwise indicate that this crime was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. As noted above, the police report accompanying the Supplement B also identified the incident as a robbery. Accordingly, the Petitioner has not met his burden of establishing, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted extortion or any other qualifying crime as perpetrated against him; instead, law enforcement detected, investigated, or prosecuted as perpetrated against the Petitioner was robbery under section 3701 of the Pa. Cons. Stat.

The Petitioner also contends that because the perpetrator threatened him with a gun, placing him in fear for his life if he didn’t turn over the money in the cash register, the perpetrator “committed attempted assault and extortion with the intent to rob.” Section 3923 of the Pa. Cons. Stat. provides, in pertinent part, that a person is guilty of theft by extortion if they intentionally obtain or withhold property of another by threatening to commit another criminal offense. The Supreme Court of Pennsylvania has examined the elements of extortion and robbery and concluded that they are distinct offenses – noting that “[i]n robbery the taking of property is against the will by means of force or violence, while in extortion the taking is with the consent of the victim, induced, as it may be, by the threat of some exposure or the making of some criminal charge whether false or otherwise.”⁵ Here, the record reflects this distinction as the Petitioner did not consent to the taking of money from the cash register, rather, the perpetrator used the implied threat of violence to accomplish his theft which meets the definition of a robbery and not extortion. Considering the foregoing, the evidence does not establish that the Petitioner was a victim of extortion under section 3923 of the Pa. Cons. Stat. Instead, the record shows that he was the unfortunate victim of robbery under section 3701 of the Pa. Cons. Stat.

⁴ Along similar lines, the Petitioner argues that he was the victim of felonious assault under the definition of aggravated assault under section 2A2.2 of the Federal Sentencing Guidelines Manual, which is defined as an assault by one person upon another for the purpose of inflicting severe or aggravated bodily injury. However, even assuming, arguendo, that the Federal Sentencing Guidelines applied to the instant case, the record does not indicate that perpetrator had a weapon or that the certifying agency detected, investigated, or prosecuted the intent to cause the Petitioner bodily injury.

⁵ Commonwealth v. Burdell, 380 Pa. 43, 110 A.2d 193 (1955)

D. 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 he was the victim of qualifying criminal activity, or an offense that is substantially similar to a qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that he was a victim of a qualifying crime or any similar activity to a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the Petitioner is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.