



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

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

In Re: 27860493

Date: SEP. 19, 2023

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director of the Nebraska Service Center denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), and we dismissed the subsequent appeal, concluding that the Petitioner was not the victim of a qualifying criminal activity or a crime substantially similar to a qualifying criminal activity. The matter is now before us on a motion to reconsider.

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 grant the motion to reconsider and remand the matter to the Director for the issuance of a new decision.

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, 376 (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).

A motion to reconsider must establish that our prior 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. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in February 2015 with a Supplement B signed and certified by a sergeant of the special victims crime unit in the [REDACTED] Police Department in [REDACTED] California (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “False Imprisonment,” “Felonious Assault,” and “Other: Robbery-Strong Arm.” The certifying official cited to sections 211 (robbery) and 236 (false imprisonment) of the California Penal Code (Cal. Penal Code) as the specific statutory citations investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that “[t]wo unknown suspects cornered [the Petitioner] and threatened to take out a gun. Both suspects then searched through [the Petitioner]’s pockets and stole [the Petitioner]’s belongings.” The certifying official further indicated that there were “[n]o known or documented injuries.” The incident report accompanying the Supplement B identifies the offense as a “robbery, street or public place, with force” under section 211 of the Cal. Penal Code. The narrative portion of the incident report sets forth an account consistent with that in the Supplement B and provides further detail about the incident including that the two suspects approached the Petitioner, asked about a red hat he was wearing, and asked if he was in a gang, to which he replied that he was not. One suspect then told the second suspect to “take out his gun,” and the two suspects then went through his right rear pants pocket and left jacket pocket, and stole his wallet and cell phone, along with the hat from on top of his head. The Petitioner did not suffer any injuries as he remained still and did not confront the suspects during the robbery. The Petitioner submitted a personal statement which confirms the information in the incident report.

The Director eventually issued a second request for evidence (RFE) relating to qualifying criminal activity, and in response, the Petitioner submitted an updated Supplement B, completed by the same certifying official as the previous Supplement B, dated November 2019, and a letter from the same certifying official in support of this updated Supplement B. In this updated Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “False Imprisonment” and “Felonious Assault.” In addition to the previously cited sections 211 (robbery) and 236 (false imprisonment) of the Cal. Penal Code, the certifying official listed section 245(a)(2) (assault with a deadly weapon) of the Cal. Penal Code, as a statute being detected and investigated. The certifying official also included additional language under Part 4.4, noting “[t]he Applicant’s belief that the Suspects were in possession of a gun was reasonable. Suspect 1 told Suspect 2 to take out his gun.” In a letter accompanying the updated Supplement B, the same certifying official stated that after his review of the contemporaneous police report, he

“concluded that the responding officers detected and investigated” this additional statute, and the criminal activity against the Petitioner “was felonious because it was carried out while the victim believed there was a firearm.” The certifying official also explained that the Petitioner was the victim of false imprisonment as he reasonably believed that the assailants possessed a gun, which placed him in fear for his safety and prevented him from confronting the suspects or fleeing the scene.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. In our decision, incorporated here by reference, we acknowledged that the initial Supplement B, the updated Supplement B, and the letter in support of the updated Supplement B indicated that the Petitioner had been a victim of felonious assault and of false imprisonment, but noted that the [REDACTED] Police Department police report listed only robbery as the crime investigated, and ultimately concluded that robbery, with force, under section 211 of the Cal. Penal Code, was the crime of which the Petitioner had been a victim. We maintained that robbery was not a qualifying criminal activity and determined that robbery was not substantially similar to the crime of felonious assault or the crime of false imprisonment, and thus concluded that the Petitioner was not a victim of a qualifying crime.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner contends that he was the victim of the qualifying crime of false imprisonment. Alternatively, the Petitioner contends that he is the victim of qualifying criminal activity because the combination of the robbery and physical force he suffered is substantially similar to the qualifying crime of felonious assault.¹

B. The Petitioner Is a Victim of False Imprisonment

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 . . .”).

¹As the Petitioner has demonstrated that he was the victim of the qualifying crime of false imprisonment, we need not further address his arguments regarding being the victim of the qualifying crime of felonious assault.

On motion, the Petitioner asserts that he was the victim of the qualifying crime of false imprisonment under section 236 of the Cal. Penal Code because that crime was certified on both Supplement B forms as having been detected and investigated. The Petitioner further argues that the underlying facts of the crime set forth in the incident report satisfy the elements of false imprisonment as he was accosted by two assailants in an isolated area, made to believe they had a gun, and physically assaulted when the assailants forced their way onto his person and rifled through his pockets. He reiterates his statement in the record that he wanted to fight back but did not want to risk being beaten or shot, so he just stood there, unable to react.

We acknowledge the Petitioner's arguments that he was also the victim of the qualifying crime of false imprisonment during the robbery detected against him based on the factual circumstances of the offense. However, evidence describing what may appear to be, or hypothetically could have been investigated or charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence indicating, by a preponderance of the evidence, that relevant law enforcement authorities in fact detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. §§ 214.14(a)(2), (a)(9), (b)(3). Nevertheless, upon review, the preponderance of the evidence demonstrates that the certifying agency also detected and investigated the qualifying crime of false imprisonment as committed against the Petitioner during the robbery, as he asserts.

Here, in both Supplement B forms, the same certifying official checked the box in Part 3.1 indicating that the Petitioner was the victim of criminal activity involving "false imprisonment," among other crimes, and also specifically identified section 236 of the Cal. Penal Code corresponding to false imprisonment as one of the criminal activities detected and investigated as having been perpetrated against the Petitioner. Additionally, both the certifying official and responding police officer described criminal conduct in the Supplement B forms and incident report, respectively, that is consistent with false imprisonment. At the time of the crime and as described by the certifying official, false imprisonment was identified in section 236 of the Cal. Penal Code as "the unlawful violation of the personal liberty of another." Cal. Penal Code § 236 (2012). California courts have held that "personal liberty is violated when the victim is compelled to remain where he does not wish to remain, or to go where he does not wish to go." *People v. Von Villas*, 10 Cal. App. 4th 201, 255 (1992); *see also People v. Haney*, 75 Cal. App. 3d 308, 313 (1977) (stating that "[a]ny exercise of force or express or implied threat of force by which in fact the person is restrained from his liberty, compelled to remain where he does not wish to remain, or to go where he does not wish to go, is such [false] imprisonment."). In this case, the responding police officer noted in his report that, "[suspect 1] told [suspect 2] to take out his gun" and proceeded to go through the Petitioner's right rear pocket and stole his wallet as suspect 2 went through the Petitioner's left jacket pocket and stole his cell phone along with his hat from on top of his head. It further stated that the Petitioner "was in fear for his safety and did not want to confront [suspect 1] and [suspect 2]." Likewise, the certifying official (who completed both Supplement B forms in the record), in describing the crime against the Petitioner, consistently stated that the two suspects "cornered [the Petitioner] and threatened to take out a gun." The certifying official further stated, in the second Supplement B and in his letter, that the Petitioner "reasonably believed" that the two suspects had a gun and did not move or confront the two suspects because he was in fear for his safety. In the letter, the certifying official clarified that this implied threat of gun violence, coupled with the act of robbing the victim, was an exercise of force which deprived the Petitioner of his liberty and compelled him to remain where he did not wish to remain, in violation of

section 236 of the Cal. Penal Code. In this case, the account of the offense in the incident report, Supplement B forms, and relevant evidence show, by a preponderance of the evidence, that law enforcement detected, and the Petitioner was a victim of, false imprisonment under California law during the commission of the robbery. *See* U Interim Rule, *supra*, at 53018 (stating that qualifying criminal activity may occur during the commission of non-qualifying criminal activity). Based on the foregoing, the Petitioner has established, by a preponderance of the evidence, that law enforcement detected false imprisonment as perpetrated against him. Consequently, the Petitioner has established that he is the victim of qualifying criminal activity.

III. CONCLUSION

On motion to reconsider, the two Supplement B forms and relevant evidence show, by a preponderance of the evidence, that law enforcement detected and investigated, and the Petitioner was a victim of, false imprisonment under section 236 of the Cal. Penal Code. Consequently, the Petitioner has established that he was the victim of qualifying criminal activity. As such, we will remand the matter to the Director for consideration of whether the Petitioner satisfies the remaining statutory eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The motion to reconsider is granted and the matter is remanded to the Director for the entry of a new decision consistent with the foregoing analysis.