



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 23250636

Date: DECEMBER 14, 2022

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 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 Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was the victim of a qualifying crime. We dismissed the Petitioner’s appeal as well as a subsequent motion to reopen. The matter is now before us on a motion to reopen. On motion, the Petitioner submits a brief and new evidence. Upon review, we will remand the matter to the Director for further proceedings.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We determine, in our sole discretion, the credibility of and the weight to give to all of the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

We incorporate our prior decisions by reference and will repeat only certain facts as necessary here. The Petitioner filed his U petition with a Supplement B signed and certified by the Chief Municipal Prosecutor of the [redacted] Municipal Prosecutor’s Office in [redacted] New Jersey (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal felonious assault and robbery. In our appeal decision, we agreed with the Director and found that the nature and elements of robbery under section 2C:15-1 of the N.J. Stat. Ann.¹ are not substantially similar to New Jersey’s state law equivalent to felonious assault, aggravated assault in the third degree,² or unlawful

¹ At the time of the offense, N.J. Stat. Ann. § 2C:15-1 provided that an individual is guilty of robbery, if in the course of committing a theft, the individual inflicts bodily injury or uses force upon another or threatens another with or purposely puts him in fear of immediate bodily injury.

² At the time of the offense, N.J. Stat. Ann. § 2C:12-1(b)(7) provided that a person is guilty of aggravated assault when that person “[a]ttempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury.”

criminal restraint.³ With the first motion, the Petitioner submitted an updated Supplement B, signed in January 2022 by the same certifying official who signed the original Supplement B. In the updated Supplement B, the certifying official added citations to aggravated assault in the third degree under section 2C:12-1(b)(7) of the N.J. Stat. Ann. and criminal restraint under section 2C:13-2 of the N.J. Stat. Ann., as the statutes for the criminal activity investigated or prosecuted. We reiterated that, notwithstanding the Petitioner's description of his injuries, the Supplement B forms, incident report, and contemporaneous hospital emergency room records indicate that he suffered lip and eyebrow lacerations requiring stitches, ear pain, and bruising on his face – injuries that do not constitute significant or serious bodily injury as contemplated by New Jersey law.

In the instant motion, the Petitioner contends that we ignored the fact that section 2C:12-1(b)(7) of N.J. Stat. Ann provides that an attempt to cause significant bodily injury to another is also an aggravated assault, and “the suspects were attempting to cause significant bodily injury to petitioner by punching him in the head and face, which indeed led to the significant injuries petitioner sustained.” The Petitioner also submits a letter from the certifying official, dated May 26, 2002. In the letter, the certifying official states, in pertinent part, that the “assault upon petitioner was an [a]ggravated [a]ssault as defined under NJSA 2C-12(1)(b)(7) . . . because the injuries investigated and recorded in the report by [the responding officer] indicated that petitioner suffered significant bodily injury . . . as defined under NJSA 2C:11-1(d) in that he lost temporary function of his left eye and lip, which were both injured requiring stitches and treatment over his left eye and lip.” The certifying official further states that the “petitioner also suffered [c]riminal [r]estraint, as defined under, NJSA 2C:13-2, because the two suspects attacked him, knowingly restraining the petitioner unlawfully while exposing him to the risk of serious bodily injury and causing him to suffer serious bodily injury.”

The record, as supplemented on motion, includes additional evidence material to the issues that informed the Director's determination. Accordingly, we will remand the matter to the Director to consider this evidence in the first instance and determine if the Applicant has established the remaining eligibility requirements for adjustment under section 245(m) of the Act.

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

³ At the time of the offense, N.J. Stat. Ann §§ 2C:13-2 defined criminal restraint as unlawfully restraining someone in circumstances exposing them to risk of serious bodily injury or holding a person in involuntary servitude.