



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

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

In Re: 25612598

Date: APRIL 24, 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 she 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 she 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, the matter will be remanded to the Director for the issuance of a new decision.

## **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.<sup>1</sup> 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 her U petition in 2016 with a Supplement B signed and certified by the Assistant District Attorney for [REDACTED] North Carolina (certifying official). In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the certifying official indicated that the Petitioner was a victim of criminal activity involving or similar to “Other—Armed Robbery.” In part 3.3, the certifying official did not cite to any North Carolina statutory provision as the specific statutory citation for the criminal activity investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that the Petitioner, an employee of a fast-food restaurant, “was taking a break in the dining area with her sister when two assailants walked into the restaurant with guns pointing at them. The assailants gathered the staff including [the Petitioner] in the kitchen. In the meantime, one of the assailants took the manager into the safe room demanding money while the other remained with the staff pointing a handgun to their faces.” The police report accompanying the Supplement B classified the incident as “robbery with firearm – commercial house.” Neither the Supplement B nor the police report indicated that the Petitioner sustained any injuries during the criminal activity.

In response to a request for evidence (RFE) by the Director, the Applicant submitted a second Supplement B certified in August 2022. In Part 3.1 of the new Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “Felony Assault” and “Kidnapping.” The certifying official cited to kidnapping under section 14-39 of North Carolina General Statutes Annotated (N.C. Gen. Stat. Ann.) and robbery with a firearm under section 14-87 of N.C. Gen. Stat. Ann. as the statutory provisions for the criminal activity investigated or prosecuted. After reviewing the Petitioner’s response, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity. The Director noted that although the updated Supplement B indicated that the Petitioner was the victim of kidnapping and felony assault, there was no other evidence in the record indicating that law enforcement detected, investigated, or prosecuted kidnapping or felony assault perpetrated against the Petitioner. The Director then concluded that armed robbery is not a qualifying crime under the Act and is not substantially similar to any qualifying crime.

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<sup>1</sup> 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.

## B. Qualifying Criminal Activity

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 . . . .”).

On appeal, the Petitioner contends that she has established that she is a victim of felonious assault because the perpetrators held a gun to her and her coworkers, placing them “in fear to gain control over the employees in the restaurant.” She also argues that armed robbery under section 14-87 of N.C. Gen. Stat. Ann. is substantially similar to the qualifying crime of felonious assault.

Assault under North Carolina law involves either “an overt act or an attempt . . . with force and violence, to do some immediate physical injury to . . . another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm,” or a “show of violence accompanied by reasonable apprehension of immediate bodily harm or injury on the part of the person assailed which causes him to engage in a course of conduct which he would not otherwise have followed.” *State v. Roberts*, 155 S.E.2d 303, 305 (N.C. 1967).<sup>2</sup> Simple assault is punished as a misdemeanor in North Carolina. N.C. Gen. Stat. § 14-33. To rise to the level of a felony, section 14-32 of the N.C. Gen. Stat. Ann. requires not only an assault, but some aggravating factor such as the use of a deadly weapon or the infliction of “serious bodily injury.”

In the present case, the Petitioner submitted an updated Supplement B indicating that she was the victim of criminal activity involving or similar to “Felonious Assault.” In addition, the narrative portion of the Supplement B indicated that the perpetrators had handguns and pointed them at the Petitioner and others present in the restaurant. As noted above, assault under North Carolina requires only an overt act or an attempt “sufficient to put a person of reasonable firmness in fear of immediate bodily harm,” and assault rises to the level of felonious assault when there is assault 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 she was held at gunpoint which is sufficient to put a reasonable person in fear of bodily harm. Accordingly, and on the basis of the above, the Petitioner

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<sup>2</sup> Section 14-33(a) of N.C. Gen. Stat. Ann., the statutory provision for simple assault, provides that “any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.” Because assault is not clearly defined by statute, it is characterized by the conventional Common Law offense of assault.

has established, by a preponderance of the evidence, that law enforcement detected felonious assault as defined under North Carolina law as perpetrated against her.

### III. CONCLUSION

As the Petitioner has established that law enforcement detected, investigated, or prosecuted, and she was the victim of, a qualifying crime, we remand the matter for the Director to determine whether the Petitioner has met her burden of establishing the remaining eligibility criteria for U nonimmigrant status.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.