



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

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

In Re: 23551851

Date: JAN. 19, 2023

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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 Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the record did not establish that the Petitioner was a victim of qualifying criminal activity, or a crime substantially similar to a qualifying criminal activity. The matter is now before us on appeal. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To establish eligibility for U 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 term "investigation or prosecution" of a 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).

"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). When a certified offense is not a qualifying criminal activity specifically listed 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. 8 C.F.R. § 214.14(a)(9). 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. *Id.*

One qualifying crime under section 101(a)(15)(U)(iii), “felonious assault,” must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying “felonious assault” when committed “in violation of Federal, State or local criminal law” as a qualifying criminal activity).

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.

The Petitioner filed his Form I-918 in April 2016 with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), wherein a certifying official from the [REDACTED] Police Department indicated the Petitioner was the victim of felonious assault and “Armed Rob 1st degree,” as well as attempt to commit those crimes. The certifying official listed section 609.245 of the Minnesota Statutes for aggravated robbery as the criminal activity investigated or prosecuted and provided a description of the criminal activity investigated, stating that the Petitioner was assaulted and robbed at gunpoint and was punched in the mouth. The Petitioner also submitted an incident report reflecting that law enforcement responded to a residential armed robbery where three men entered the Petitioner’s house demanding money. The report adds that one of the men had a handgun and that he punched the Petitioner in the mouth when he told the man that he did not have any money. In describing the offense associated with the incident, the report cites to section 609.245 of the Minnesota Statutes, describing the offense as “ROBBERY-1ST DEG-RESID-STRONG ARM.”

The Director requested additional evidence in part to establish that the Petitioner was the victim of a qualifying criminal activity. In response, the Petitioner submitted an updated Supplement B certifying that he was the victim of a felonious assault and that law enforcement investigated or prosecuted criminal activity under sections 609.245 (Aggravated Robbery) and 609.224 (Assault in the Fifth Degree) of the Minnesota Statutes. Consistent with the initial Supplement B, the certifying official stated in the updated supplement that the Petitioner was assaulted and robbed at gunpoint and punched in the mouth.

The Director denied the Petitioner’s Form I-918 concluding that the Petitioner was the victim of aggravated robbery under section 609.245 of the Minnesota Statutes but that it was not a qualifying crime or substantially similar to a felony-level assault provision found at section 609.222 (Assault in the Second Degree) of the Minnesota Statutes. Next, the Director acknowledged that fifth degree assault under section 609.224 of the Minnesota Statutes was included in the updated Supplement B as a crime investigated or prosecuted, but that it was a misdemeanor-level assault provision and therefore not a qualifying criminal activity. Finally, the Director concluded there was no evidence that law enforcement detected or investigated a felonious assault against the Petitioner.

On appeal, the Petitioner claims that he was the victim of crime investigated as a felonious assault because robbery in Minnesota incorporates an assault and he was physically assaulted by a man holding a gun who punched him in the face. In support of his claim, the Petitioner argues that “qualifying criminal activity may occur during the commission of non-qualifying criminal activity.”

*See* U Interim Rule. The Petitioner also asserts that aggravated robbery in Minnesota is substantially similar to felonious assault as defined in various Minnesota statutes.

At the time of the criminal activity, Minnesota defined first degree aggravated robbery as when a person, “while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another....” Minn. Stat. § 609.245, subd. 1. The state defines fifth-degree assault, which is punished as a misdemeanor, as when a person “commits an act with intent to cause fear in another of immediate bodily harm or death,” or when one “intentionally inflicts or attempts to inflict bodily harm upon another.” Minn. Stat. § 609.224, subd. 1. An assault in Minnesota becomes felonious, however, when certain aggravating factors are present such as when an assault is committed “with a dangerous weapon.” *See* Minn. Stat. § 609.222, subd. 1. For clarification, we note that a handgun is included as a “dangerous weapon” in Minnesota. Minn. Stat. § 609.02, subd. 6. Additionally, Minnesota courts have held that robbery is accomplished through an assault. *See State v. Stanifer*, 382 N.W.2d 213, 220 (Minn. Ct. App. 1986) (stating that “proof of the ‘use or threatened imminent use of force against a person’ in a prosecution for simple robbery necessarily proves a fifth-degree assault, as that crime is statutorily defined.”).

There is sufficient evidence in this case to establish law enforcement detected or investigated a felonious assault during the commission of the robbery. The incident report states that law enforcement investigated a robbery where one of the perpetrators was armed with a handgun and struck the Petitioner. The certifying official in both Supplements B certified that the Petitioner was the victim of a felonious assault and described that the Petitioner was “assaulted and robbed at gunpoint.” Because Minnesota courts have determined that an assault necessarily occurs during a robbery, and the facts as detected, prosecuted, or investigated by law enforcement above establish that the perpetrator committed an assault while armed with a dangerous weapon, the Petitioner has shown the required elements for felony assault under section 609.222 of the Minnesota Statutes were detected or investigated during the commission of the robbery. As a result, the Petitioner has established that he was the victim of a felonious assault and therefore a qualifying criminal activity.

Because we have determined that the Petitioner was the victim of a qualifying criminal activity, we decline to reach and hereby reserve the Petitioner’s claim that aggravated robbery under section 609.245 of the Minnesota Statutes is substantially similar to a qualifying criminal activity under Federal, State, or local criminal law. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

The Petitioner has established by a preponderance of the evidence that he is the victim of a qualifying criminal activity. Accordingly, we will withdraw the Director’s decision and remand the matter to the Director to determine whether the Petitioner has satisfied the remaining eligibility requirements 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.