



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

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

In Re: 29001494

Date: NOV. 02, 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 National Benefits Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the Petitioner did not establish he was a victim of qualifying criminal activity or a crime involving or substantially similar to a qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3. 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.

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).

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.*

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying that the petitioner possesses information concerning the qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of it.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Although petitioners may submit any relevant, credible evidence for the agency to consider, U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

The Petitioner filed his Form I-918 in 2016, along with a Supplement B signed and certified by a commander in the [redacted] Police Department (certifying official) in [redacted] Minnesota regarding an incident that occurred in July 2015. 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 checked the boxes for “Felonious Assault,” “Related Crime(s),” and “Other:,” adding “Robbery.” The certifying official identified “Minn. Stat. 609.245 (Subd. 1),” and “Minn. Stat. 609.222,” corresponding to aggravated robbery and assault in the second degree, respectively, in Part 3.3 as the specific statutory citations for the criminal activity investigated or prosecuted. When asked in Part 3.5 to describe the criminal activity being investigated, the certifying official stated that the perpetrators “assaulted a total of five victims who had their wallets stolen at gunpoint.” In Part 3.6, the certifying official stated the Petitioner was “experiencing PTSD symptoms as a result of being held up at gunpoint during [the] assault and robbery.”

The Petitioner included an investigative report reflecting that law enforcement responded to a robbery where two perpetrators “assaulted the caller and his friends,” and that “there was a total of five victims who had their wallets stolen at gunpoint....” In describing the offense associated with the incident, the report cites to section 609.245 of the Minnesota Statutes and described the offense as “ROBPAG” and “Robbery Per Agg.” Additionally, when describing the suspects, the report reflects that each used “9mm handguns.”

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 nor substantially similar to a felony-level assault provision found at section 609.222 (Assault in the Second Degree) of the Minnesota Statutes.

On appeal, the Petitioner claims he was the victim of sections 609.222 (Assault in the Second Degree) and 609.245 (Aggravated Robbery) of the Minnesota Statutes and that the two sections are substantially similar to felonious assault and thus he meets the requirements for U nonimmigrant classification.

As noted above, the Act requires that petitioners 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

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.

214(p)(1) 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). 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 . . .”).

Here, the Supplement B, when read as a whole and in conjunction with other evidence in the record, establishes that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner during the July 2015 robbery. *See* 8 C.F.R. § 214.14(c)(4) (stating that the burden “shall be on the petitioner to demonstrate eligibility” and that “USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B”). The certifying official in the Supplement B certified that the Petitioner was the victim of a felonious assault, specifically listed section 609.222 (Assault in the Second Degree) of the Minnesota Statutes, a felony, as one of the criminal activities investigated, and stated that the Petitioner was “assaulted . . . at gunpoint” and was “held up at gunpoint during [the] assault and robbery.” Consistent with the Supplement B, the incident report also shows that law enforcement detected the perpetrators as having been armed with and using a handgun during the robbery to threaten the Petitioner.

The certifying official’s inclusion of felonious assault in the Supplement B is also consistent with Minnesota courts, which have held that robbery is accomplished through an assault.² *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.”) (emphasis added). And at the time of the incident in this case, an assault in Minnesota became felonious when certain aggravating factors were present such as when an assault was committed “with a dangerous weapon,” which includes a handgun. *See* Minn. Stat. §§ 609.222, subd. 1, 609.02, subd. 6.

The Petitioner has established by a preponderance of the evidence that he is the victim of a felonious assault and therefore 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 classification.

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

² We note that the decision in *State v. Stanifer* is from 1986 and that the Court analyzed the 1984 versions of sections 609.24 and 609.224 of the Minnesota Statutes when issuing the decision. However, the language of the 1984 versions and the versions in use at the time of the offense in this case are materially the same.