



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

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

In Re: 28358998

Date: NOV. 3, 2023

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of a 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), 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 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 dismiss the appeal.

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 a 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). Parents of a direct victim, who was under 21 years of age at the time the qualifying criminal activity occurred, will also be considered victims of a qualifying criminal activity, if the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, such that they

are unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i).

“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 a 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.

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 the petitioners’ credible and reliable information regarding, and helpfulness in the investigation or prosecution of, the qualifying criminal activity perpetrated against them.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all 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 Procedural History

The Petitioner filed her U petition in May 2016 with a Supplement B signed and certified by an Assistant District Attorney of the [REDACTED] District Attorney’s Office in [REDACTED] North Carolina (certifying official). The certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to “Other: Robbery/Assault.” The certifying

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.

official cited to sections 14-87.1 and 14-33 of the North Carolina General Statutes Annotated (N.C. Gen. Stat. Ann.) 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 to “see police report” and where asked to provide a description of any known or documented injury to the victim, the certifying official indicated “injury to her son’s upper and lower lip; swollen right eye.” The [redacted] Police Department incident report accompanying the Supplement B identifies the offense as a “robbery/ robbery: common law” and “assault/ assault: simple,” and indicates that the weapons used were “personal weapons (hands, feet, teeth, etc.).” The narrative portion of the incident indicates that six juveniles took the victim’s (minor child) shoes and cell phone while striking him in the face. Although the incident report also identifies the injury as “minor injury” and the injury type as “apparent minor injuries,” and indicates that medical treatment was “refused treatment to police,” the Petitioner submitted evidence to show that the victim was taken to the hospital and treated for his injuries.

In a personal statement, the Petitioner described the incident similar to the information in the incident report and added that when her son refused to hand over the items to be stolen, the perpetrators became “extremely violent and started assaulting [her son] very brutally and throwing him to the ground.” She recalled that while some of the perpetrators were beating up her son, others forcibly took his shoes and cell phone, leaving her son physically and emotionally scarred.

The Director denied the U petition after concluding the Petitioner was the victim of common law robbery under section 14-87.1 of the N.C. Gen. Stat. Ann., which was not one of the crimes listed in section 101(a)(15)(U)(iii) of the Act, that common law robbery was not substantially similar to a felonious assault under section 14-32.4 of the N.C. Gen. Stat. Ann., and that felonious assault was not otherwise detected or investigated during the commission of the robbery.

On appeal, the Petitioner claims her son was assaulted with dangerous weapons and asserts that the combined offenses identified in the Supplement B contain elements that are similar to the offense of felonious assault.

B. Qualifying Criminal Activity Was Not Detected, Investigated, or Prosecuted

At the outset, the Petitioner’s Supplement B indicates at Part 3 that the Petitioner is a victim of criminal activity involving or similar to violations of robbery and assault. As the statutory citations for the criminal activity investigated or prosecuted, it lists “NCGS 14-87.1,” which related to the N.C. Gen. Stat. Ann. section for “punishment for common-law robbery,” and “NCGS 14-33,” which related to the N.C. Gen. Stat. Ann. section for “misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.” The Petitioner’s incident report from the [redacted] Police Department identified the offenses detected as committed against the victim using the National Incident-Based Reporting System (NIBRS) codes, and indicated code 120, described as “robbery” against property, and code 13B, described as “simple assault” against a person. Further, the Petitioner does not assert that any qualifying criminal activity committed against her son (the direct victim) was detected, investigated, or prosecuted but rather that the crime committed against her son, robbery, is substantially similar to a qualifying crime, specifically felonious assault. Accordingly, the record does not establish that the certifying agency detected, investigated, or prosecuted a qualifying criminal activity as perpetrated against the Petitioner.

The Act lists general types of criminal activity and includes offenses “involving” one or more of the qualifying crimes. Section 101(a)(15)(U)(iii) of the Act; *see also* 72 Fed. Reg. at 53018 (reiterating that section 101(a)(15)(U)(iii) of the Act “is not a list of specific statutory citations, but instead a list of general categories of criminal activity”). The Act also provides that “any similar activity” to the qualifying crimes may also be considered a qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. The regulations explicitly define the term “any similar activity” as “offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of qualifying criminal activities.” 8 C.F.R. § 214.14(a)(9). Accordingly, a qualifying criminal activity is that equivalent to, “involving,” or substantially similar in its nature and elements to, a qualifying crime enumerated in the Act. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9); *see also* 72 Fed. Reg. at 53018 (stating that the definition of “any similar activity” was needed because, and “base[d] . . . on[,] the fact that the statutory list of criminal activity is not composed of specific statutory citations”).

At the time of the offense committed against the Petitioner’s son, section 14-87.1 of the N.C. Gen. Stat. Ann. provided that “[r]obbery as defined at common law, other than robbery with a firearm or other dangerous weapon as defined by G.S. 14-87, shall be punishable as a Class G felony.” Section 14-87(a) of the N.C. Gen. Stat. Ann. provided that:

Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. Ann. § 14-87(a) (2014).

First, the Petitioner argues that the offense of robbery with a firearm or other dangerous weapons was committed against the victim because the perpetrators did use dangerous weapons: their hands and feet. The Petitioner contends that several jurisdictions and the Model Penal Code (MPC) consider hands, feet, and teeth as possible dangerous weapons, particularly when used or intended to be used in a manner capable of producing death or serious bodily injury. Therefore, in considering the perpetrator’s hands and feet as dangerous weapons capable of producing great bodily injury, the Petitioner claims that the elements of the crimes are substantially similar.

The Petitioner, however, does not cite to the North Carolina statute for felonious assault and instead lists various definitions from unpublished circuit decisions, Black’s Law Dictionary, and U.S. Sentencing Guidelines. These definitions of a felonious assault do not address that term as contemplated by North Carolina law. The Petitioner does not argue that a specific North Carolina assault statute classified as a felony is substantially similar to robbery, the crime detected in this case, or robbery with a firearm or other dangerous weapons. The U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a “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) (providing that a qualifying criminal activity includes “any similar activity in violation of Federal, State or local criminal law” as a qualifying criminal activity); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner). Here, North Carolina, the jurisdiction where the crime occurred, has felony level assault statutes. As the Petitioner has not identified a felonious assault under North Carolina law, she has not met her burden of demonstrating that the crime detected as perpetrated against the victim is substantially similar to the qualifying crime of felonious assault under North Carolina law.

The crime of assault in North Carolina is governed by common law rules; there is no statutory definition of assault. However, the North Carolina Supreme Court has defined “the common law offense of assault as ‘an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of 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.’” *State v. Roberts*, 155 S.E.2d 303, 305 (N.C. 1967). And, the N.C. Gen. Stat. Ann. provides for different punishments for various types of assault offenses. The specific elements that elevate a simple assault to a felony include aggravating factors such as castration; maiming; the use of corrosive acid or alkali; the use of a deadly weapon either with the intent to kill or resulting in serious injury; assaults that inflict serious bodily injury; assaults against a particular class of person; discharging certain barreled weapons or firearm; or adulterated or misbranded food, drugs, or cosmetics. N.C. Gen. Stat. Ann. §§ 14-28 – 14-32.4, 14-34.1 – 14-34.2, 14-34.4 – 14-34.7, 14-34.9 – 14-34.10. The term “serious bodily injury” is defined at section 14-32.4 of the N.C. Gen. Stat. Ann. as “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization,” none of which occurred in this case.

Comparison of North Carolina robbery with firearm or dangerous weapon and felonious assault definitions demonstrate that these crimes are not substantially similar in their nature and elements. The offense of robbery unlike assault is, in part, a property crime requiring the taking of money or goods. And, although robbery with a firearm or dangerous weapon does include the use of a deadly weapon, just as North Carolina’s felonious assault statute at section 14-32 of the N.C. Gen. Stat. Ann., it does not include the additional factor required for felonious assault, a resulting serious injury or an intent to kill. Accordingly, the Petitioner has not established that robbery is substantially similar to felonious assault under North Carolina statute.

C. The Remaining Eligibility Criteria for U-1 Classification

Unimmigrant classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of a qualifying criminal activity. Because the Petitioner has not established that she was the victim of a qualifying criminal activity or a crime substantially similar to a qualifying criminal activity, she necessarily cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.²

² The Director also determined that the Petitioner did not demonstrate she (1) suffered substantial physical or mental abuse

III. CONCLUSION

The Petitioner has not established that she was the victim of a qualifying criminal activity, or a crime involving or substantially similar to a qualifying criminal activity. Consequently, the Petitioner is not eligible for U nonimmigrant status.

ORDER: The appeal is dismissed.

as the result of having been a victim of qualifying criminal activity; (2) possessed information regarding qualifying criminal activity; and (3) was helpful to law enforcement concerning qualifying criminal activity. As our findings that the Petitioner has not established that she was the victim of qualifying criminal activity is dispositive of this appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on these issues. *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"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a Petitioner is otherwise ineligible).