



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

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

In Re: 28566637

Date: NOV. 8, 2023

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner was a victim of 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.

I. LAW

U petitioners must establish that qualifying criminal activity was perpetrated against them, and that the certifying agency detected, investigated, or prosecuted this qualifying criminal activity. The record as a whole must support the certification of that victimization in order to establish a petitioner’s eligibility for U nonimmigrant status. Section 214(p)(1), (4) of the Act; 8 C.F.R. § 214.14(c)(2)(ii), (4). 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).

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 activity “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 the elements of the offenses are substantially similar to the statutory list of criminal activities at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

As required initial evidence, U petitioners must submit Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) from a law enforcement official certifying a petitioner’s helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B is required evidence which informs, but does not solely determine, whether a U petitioner is a victim of qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i)-(ii), (c)(4). Although a petitioner may submit any relevant, credible evidence for consideration, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed the U petition in April 2016 with a Supplement B signed and certified by a designated officer of the [redacted] Police Department (certifying official). The certifying official checked the boxes to indicate that felonious assault, attempt, and related crimes were the qualifying criminal activity. The certifying official also checked the box for “other” criminal activity and listed attempted armed burglary. In support of this certification, the certifying official cited to burglary and home-invasion robbery in Florida’s annotated statutes as the crimes that were investigated or prosecuted: Fla. Stat. Ann. §§ 810.02(2)(b), 812.135. When asked to describe the criminal activity, the certifying official noted that the Petitioner was home when he and his roommates heard a noise at the front door. They opened the door to find the source of the noise; three individuals attempted to “force their way into his home with a gun.” The Supplement B indicates that no physical injuries were noted.

The [redacted] Police Department prepared an incident report (incident report) indicating that the Petitioner was the victim of attempted burglary. The incident report listed the Petitioner and his two roommates as victims and indicated that three unidentified suspects were involved in the incident. The third suspect’s description noted “handgun” in the “weapon held” category. The incident narrative indicated that the suspects had attempted entry to the home previously, and had been found searching the garage, but had fled. In January 2008, the three suspects returned. The Petitioner and his roommates opened their front door to investigate a noise and saw the three suspects standing outside. The suspects began to push on the front door in an attempt to gain entry to the residence. The Petitioner observed one suspect “holding what appeared to him as a light colored pistol” and indicated that he feared for his safety during this incident.

The Director denied the petition, finding that no qualifying crime had been investigated, detected, or prosecuted. The Director indicated that an assault in Florida required a threat by word or act to do violence to another. The Director further noted that an aggravated assault under Fla. Stat. Ann. § 784.021 required the use of a deadly weapon or an intent to commit a felony during the assault. When comparing these definitions to Florida’s home invasion and burglary statutes, the Director found that each of these statutes penalized conduct that differed from aggravated assault; therefore, the cited

statutes were not substantially similar to felonious assault or another qualifying crime. The Director outlined the facts of the incident and concluded that law enforcement had not prosecuted, detected, or investigated a felonious assault.

On appeal, the Petitioner asserts that the certified crimes of burglary and home-invasion robbery are crimes of violence. Furthermore, home-invasion robbery is a forcible felony; forcible felonies are defined as those that use or threaten the use of physical force or violence against an individual. Because home-invasion robbery includes the actual use of threat of physical force, and because the suspects were armed when attempting to enter the home, they had the apparent ability to cause violence. Therefore, the Petitioner had a well-founded fear that violence was imminent. The Petitioner contends that these factors, when taken together, are sufficient to show that the cited crimes are substantially similar to felonious assault.

B. Law Enforcement Detected the Qualifying Crime of Felonious Assault

As stated above, the Act requires that petitioners “ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful” to law enforcement authorities “investigating or prosecuting [qualifying] criminal activity,” as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. “Investigation or prosecution” of qualifying criminal activity “refers to 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).

The Director’s decision focused on the specific crimes listed on the Supplement B and analyzed the elements of those statutes as compared to the elements of a felonious assault in Florida. The Petitioner’s appeal similarly focuses on the robbery and home-invasion statutes and argues for their substantial similarity to aggravated assault. However, because law enforcement also certified through the Supplement B that felonious assault was investigated, detected, or prosecuted, we consider the documents prepared by law enforcement in their totality to determine if the felonious assault certification is supported by the evidence.

The Director was correct that the Supplement B and underlying incident report only included statutory citations to burglary and home-invasion robbery. However, since the Supplement B also certified felonious assault, we analyze the reports provided to determine whether felonious assault was detected. The information included in contemporaneous reports is particularly relevant to the determination of what law enforcement detected, as it outlines the information that was provided to investigating officers at the time of the offense. Here, the incident report indicates that the perpetrator was armed with what appeared to be a pistol, and that this individual stood within arm’s reach of the Petitioner while attempting to force open his door. The incident report goes on to indicate that the Petitioner was fearful during this attempted home invasion.

After considering the contents of the incident report, the Petitioner has established that law enforcement detected an aggravated assault under Florida law. Assault is defined by statute as “an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.” Fla. Stat. Ann. § 784.011. While assault is generally classified as a

misdemeanor, Florida punishes assault as a felony when it is committed either with the intent to commit a felony or with a deadly weapon without intent to kill. Fla. Stat. Ann. § 784.021.

The incident report first establishes that law enforcement detected an assault. The perpetrators threatened the Petitioner with violence. Although no verbal threat is noted, Florida law allows threats by a perpetrator's actions; attempting to force in the Petitioner's door while carrying a firearm is a threatening act. *See, e.g., State v. Rose*, 68 So.3d 377, 378 (Fla. Dist. Ct. App. 2011) (approaching victim with a firearm and telling the victim to remain quiet was an aggravated assault). The incident report indicates that the Petitioner feared for his safety. The incident report also shows that his fear of imminent violence was well-founded, as at the time the pistol was being displayed, the suspect was actively attempting to force his way into the home. *Cf. HW v. State*, 79 So.3d 143, 144-145 (overturning delinquency finding for assault where violence was not imminent, as verbal threat to kill was not accompanied by a physical act evincing the intent to immediately carry out the threat).

As noted above, assaults are generally punished as misdemeanors in Florida. However, the incident report also reflects that law enforcement detected an aggravated assault. The Petitioner stated, and law enforcement noted, that the perpetrator appeared to be armed with a pistol. Although the perpetrators were not apprehended and the exact nature of the weapon is unknown, the police credited the Petitioner's testimony and indicated that the third unknown suspect was armed with a handgun. By characterizing the weapon as a pistol or handgun, the incident report demonstrates by a preponderance of the evidence that the perpetrators carried a deadly weapon. *Humphreys v. State*, 299 So. 3d 576, 578 (Fla. Dist. Ct. App. 2020) (noting that deadly weapon is not defined by statute, but indicating that an object is a deadly weapon if it is likely to cause "death or great bodily harm when used in the ordinary and usual manner contemplated by its design"); *State v. Iseley*, 944 So.2d 227, 229 (Fla. 2006) (generally upholding firearms as examples of deadly weapons); *Garrido v. State*, 97 So.3d 291, 297 (Fla. Dist Ct. App. 2012) (finding that an unloaded gun that cannot inflict deadly force can nevertheless qualify as a deadly weapon). Florida courts have determined that brandishing or displaying a deadly weapon during an assault is sufficient to support an aggravated assault conviction even if the weapon is not discharged. *Smith v. State*, 538 So. 2d 926, 928 (Fla. Dist. Ct. App. 1989) ("To convict of aggravated assault, the state had to prove the essential element that the assault was made with the deadly weapon, i.e., by displaying or using the firearm."); *State v. Lemus*, 33 So.3d 774, 775 (Fla. Dist. Ct. App. 2010) (aiming gun toward officers constituted aggravated assault).

Alternatively, law enforcement detected an assault with the intent to commit a felony, which independently aggravates the perpetrators' conduct to a felonious assault. Law enforcement classified the incident as an attempted burglary, or alternatively as a home-invasion robbery. Both crimes are classified as felonies in Florida. The incident report provides support for the certification of these felony acts, as it details previous attempts to burglarize the home by the same unknown suspects prior to the attempted forcible entry while armed.

The Director did not address the remaining elements of eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. We will remand the case to the Director for further consideration of the Petitioner's eligibility and the issuance of a new decision on the U petition and the waiver application.

III. CONCLUSION

On appeal, the Petitioner has overcome the Director's determination that the criminal activity was not a qualifying crime or substantially similar to a qualifying crime. The record does not otherwise establish the Petitioner's eligibility for U nonimmigrant classification. We will therefore remand the case to the Director for determination of the remaining eligibility criteria.

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