



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

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

In Re: 28312642

Date: OCT. 27, 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 Petitioner did not establish he was a victim of qualifying criminal activity or a crime substantially similar to one. 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 dismiss the appeal.

I. LAW

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 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); however, 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.

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). 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).

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’ helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. 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 Forms I-918. 8 C.F.R. § 214.14(c)(1). 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. The Petitioner Was Not the Victim of Qualifying Criminal Activity

The Petitioner filed his Form I-918 in 2017, along with a Supplement B signed and certified by a captain in the [redacted] Police Department (certifying official) in [redacted] Pennsylvania regarding an incident that occurred in January 2016. The certifying official checked the box for “Other” in Part 3.1, adding that the Petitioner was the victim of criminal activity involving or similar to “Robbery”. The certifying official identified title 18, section 3701 of the Pennsylvania Consolidated Statutes (Pa. Cons. Stat.), corresponding to robbery, as the specific statutory citation for the criminal activity investigated or prosecuted, and when asked to describe the criminal activity being investigated stated that an officer “investigated a robbery” and that the Petitioner “reported being the victim of the robbery.” When asked to describe any known or documented injury to the Petitioner, the certifying official noted that the Petitioner was “punched in the face causing him to drop groceries...” and that he “suffered from the trauma of experiencing a violent crime.” The Petitioner did not submit a police report but did submit a statement dated September 2022 from a former community police coordinator who acted as an interpreter at the time the robbery was investigated.¹ The former community police coordinator recounted his experience, stating that he arrived with police officers in response to a burglary and assault and that the incident “may have been either the second or third time that this type of incident occurred at [the Petitioner’s] home.” The Petitioner provided a personal statement describing the January 2016 incident, as well as a separate robbery and a break-in that occurred later. Regarding the January 2016 incident, the Petitioner described being surrounded by four people who at first put something on his back, which he believed was either a knife or gun. He continued that the individuals then pushed him to the floor, took his wallet and phone, and hit him on his stomach and punched him on his face. The Petitioner stated he had bruising from the attack but did not seek medical attention. The Director denied the Petitioner’s Form I-918 after determining, in part, that the crime detected as perpetrated against the Petitioner, robbery under section 3701 of the Pa. Cons. Stat., is not specifically listed as a qualifying criminal activity in the statute or regulations, and is not substantially similar to one, and therefore the Petitioner did not establish that he was the victim of a qualifying criminal activity.

¹ The community police officer left their position with the [redacted] Police Department in 2017.

On appeal, the Petitioner asserts that he was the victim of a series of robberies throughout 2016 and 2017 and that the Director failed to look at the specific circumstances of these robberies to assess whether they involved a felonious assault. The Petitioner also asserts that he was a victim of robbery specifically under section 3701(a)(1)(i) of the Pa. Cons. Stat., which he claims is substantially similar to a felonious assault, namely title 18, section 2702(a)(1) of the Pa. Cons. Stat., Pennsylvania's aggravated assault statute.²

1. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

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 214(p)(1) of the Act. The Petitioner asserts he was the victim of a robbery in January 2016 that was carried out by armed individuals who physically injured him consistent with a "serious bodily injury" and thus the robbery included the state equivalent to the qualifying crime of felonious assault under section 2702(a)(1) of Pa. Cons. Stat.³ We do not seek to minimize the harm suffered by the Petitioner during the robbery. However, 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), evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence that the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act.

Here, the record as a whole, including the Supplement B, indicates the Petitioner was a victim of robbery in January 2016, and does not establish that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner during that incident as he asserts.⁴ *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"). We note that the certifying official checked the box for "Other" in Part 3.1 of the Supplement B and added that the Petitioner was the victim of criminal activity involving or similar to "Robbery" while also citing to the corresponding statute at section 3701 of the Pa. Cons. Stat. as the statute for the criminal activity that was investigated. The certifying official however did not check the box in Part 3.1 certifying that the Petitioner was the

² Although the Petitioner does not specifically cite the specific subsection of the aggravated assault statute at section 2702 of the Pa. Cons. Stat. to which he asserts robbery is substantially similar, he quotes language directly from subsection (a)(1) of that provision.

³ "Serious bodily injury" in Pennsylvania refers to bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. 18 Pa. Cons. Stat § 2602.

⁴ While the Petitioner claims he was the victim of a series of robberies throughout 2016 and 2017 and that the Director should have considered the circumstances of the separate robberies, we note that the Supplement B only certifies the Petitioner as a victim of criminal activity that specifically occurred in January 2016.

victim of a felonious assault and made no reference to felonious assault or the corresponding statute at section 2702 of the Pa. Cons. Stat. in the Supplement B. And the record does not contain a police report associated with the incident that might further describe the scope of the investigation or indicate that a felony assault was detected or investigated. Finally, while the certifying official explained that the Petitioner was punched in the face, and the statement from the community police officer makes reference to a physical assault, neither the certifying official nor the former community police officer stated that a *felony* level assault was in fact detected or even that law enforcement detected “serious bodily injury” consistent with an aggravated assault under section 2702(a)(1) as the Petitioner asserts. Accordingly, the Supplement B along with other relevant evidence in the record establishes, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted robbery under section 3701 of the Pa. Cons. Stat., which is not a qualifying criminal activity, and does not show that law enforcement detected, investigated, or prosecuted a felonious assault.

2. The Petitioner Has Not Shown that the Criminal Activity Detected Is Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner claims he is the victim of robbery under section 3701(a)(1)(i) of the Pa. Cons. Stat. which he maintains is substantially similar to felony aggravated assault under section 2702(a)(1) of the Pa. Cons. Stat. As determined above, law enforcement detected, investigated, or prosecuted robbery under section 3701 of the Pa. Cons. Stat., which is not a qualifying criminal activity. When a certified offense is not a qualifying criminal activity, as is the case here, petitioners may 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 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.* The determination does not involve a factual inquiry into the underlying criminal acts, but rather entails comparing the nature and elements of the statutes in question to determine whether crimes are substantially similar. Mere overlap with, or commonalities between, the certified offense and the statutory equivalent, however, is insufficient to establish that the offense involved or was substantially similar to a qualifying crime.

Initially, we note that the Supreme Court of Pennsylvania has held that aggravated assault under section 2702(a)(1) is a separate non-cognate offense to the charge of robbery under section 3701. *See Commonwealth v. Weigle*, 949 A.2d 899, 905 (Pa. Super. Ct. 2008) (defining a cognate offense as a lesser offense that is related to the greater offense because it shares several of the elements of the greater offense and is of the same class or category). Thus, being the victim of a robbery does not necessarily involve a felonious assault as the Petitioner maintains on appeal.

Additionally, as noted above, the Petitioner asserts he was the victim of robbery specifically under section 3701(a)(1)(i) and that the nature and elements of the offense under this section are substantially similar to section 2702(a)(1) of the Pa. Cons. Stat. At the time of the offense, robbery under section 3701(a)(1)(i) of the Pa. Cons. St. (2016) occurs when, in the course of committing a theft: a person inflicts serious bodily injury upon another. Aggravated assault under section 2702(a)(1) of the Pa. Cons. Stat. (2016) occurs when a person attempts to cause serious bodily injury to another or causes

such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life.

We acknowledge that robbery under section 3701(a)(1)(i) and aggravated assault under section 2702(a)(1) may possess some overlap as both offenses require, as an element of those offenses, serious bodily injury. However, the record, including the Supplement B, establishes that law enforcement detected, investigated, or prosecuted robbery under the *general* robbery statute at section 3701 of the Pa. Cons. Stat., which sets forth six separate robbery offenses, and neither the Supplement B nor the letter from the community police officer specify or otherwise establish that the offense detected was specifically under subsection (a)(1)(i) of that statute. And the Petitioner does not assert, nor does the record show, that the nature and elements of the robbery offenses set forth in the remaining subsections (a)(1)(ii)-(vi) are substantially similar to section 2702(a)(1) of the Pa. Cons. Stat. as none of them require substantial bodily injury as an element of those offenses as is required for aggravated assault under section 2702(a)(1). Accordingly, the Petitioner has not established that he was the victim of an offense that involves or is substantially similar to a felonious assault or any other qualifying criminal activity.

III. CONCLUSION

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 qualifying criminal activity that was investigated or prosecuted by law enforcement. As the Petitioner has not established that he was the victim of a qualifying criminal activity or a crime involving or substantially similar to a qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act and we will dismiss his appeal.

ORDER: The appeal is dismissed.