



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

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

MATTER OF N-M-P-

DATE: AUG. 29, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner was the victim of a robbery and seeks U-1 nonimmigrant classification. *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 Form I-918, Petition for U Nonimmigrant Status (U petition) finding that the Petitioner was not the victim of a qualifying crime.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and supporting information. The Petitioner asserts that she was the victim of felonious assault, a qualifying crime, or in the alternative, a crime substantially similar to felonious assault.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(U)(i) of the Act provides U nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the crime. It also provides that victims must possess information regarding the qualifying crime and be helpful to law enforcement officials in the investigation or prosecution of the crime. Section 101(a)(15)(U)(i) of the Act.

For a petitioner to qualify as a victim for U-1 classification, the criminal activity must involve one or more of the 28 types of crime listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity” in violation of Federal, State, or local criminal law. The term “any similar activity” means criminal offenses in which the nature and elements of the offenses are substantially similar to the statutory list of criminal activities. 8 C.F.R. § 214.14(a)(9).

A petitioner must file with the U petition a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioner’s helpfulness

in the investigation or prosecution of qualifying criminal activity.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i).

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Although a petitioner may submit other evidence for us to consider with the Supplement B, we determine, in our sole discretion, the credibility of and the weight to give all of the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Criminal Activity of Which the Petitioner Was the Victim

Based upon the Supplement B certification, on appeal, the Petitioner asserts that she was the victim of the qualifying crime of felonious assault committed during the course of a 2013 robbery and that nothing in the record contradicts the certification. However, the record does not demonstrate that the certifying agency investigated as being perpetrated against the Petitioner, any crimes other than robbery² and grand theft, which are not qualifying crimes.

Although the certifying official, on the Supplement B, stated the Petitioner was the victim of criminal activity involving or similar to felonious assault and robbery under section 211 of the California Penal Code and described the criminal activity as the suspect assaulting and robbing the Petitioner, neither the Supplement B nor the corresponding police report cite to sections of the California Penal Code relating to general or felonious assault. The record thus indicates that grand theft and robbery were the only crimes investigated as committed against the Petitioner.³

B. Robbery Under the California Penal Code is Not a Qualifying Crime or Substantially Similar to Qualifying Criminal Activity

Because robbery is not specifically listed as qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act, the Petitioner must establish that its nature and elements are substantially similar to felonious assault. 8 C.F.R. § 214.14(a)(9). This determination is not made based upon a review of the facts of record regarding the criminal incident but rather entails comparing the nature and elements of the investigated crime with a statutorily enumerated crime; here, the comparison is between felonious assault and robbery.

¹ The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted.

² The Director noted that although robbery was listed on the Supplement B, the police report did not identify robbery. However, the police report specifically states that officers “responded to a report of a robbery” The regulatory terms “investigation” and “prosecution” refer to the *detection* or investigation of a qualifying crime, or prosecution, conviction, or sentencing. 8 C.F.R. § 214.14(a).

³ The Petitioner does not contend on appeal that grand theft is a qualifying crime or substantially similar to any qualifying crime. Accordingly, we have limited our analysis to robbery.

At the time of the robbery, section 211 of the CPC defined robbery as “the felonious taking of personal property in the possession of another from his person or immediate presence, and against his will, accomplished by means of force or fear.” The element of fear within robbery is defined as “[t]he fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or . . . [t]he fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at time of the robbery.” Section 212 of the CPC. The degree of force involved in robbery is not defined in the CPC, but case law has described it as “immaterial” because it may be as little force as necessary to overcome the victim’s resistance to the taking of the property. See *People v. Lescallett*, 123 Cal. App. 3d 487, 491(1981)(quoting *People v. Clayton*, 89 Cal. App. 405, 411 (1928) and noting that nonconsensual snatching of a purse is sufficient for robbery); and *People v. Abilez*, 42 Cal. 4th 472, 507 (2007)(element of force may be satisfied even when the victim is unconscious or otherwise unaware of the robbery).

California law defined assault as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” CPC § 240. Section 240 is the definition of simple assault, a misdemeanor under the CPC. CPC § 241. California recognizes a distinction among misdemeanor and felony assault offenses based upon the presence of aggravating factors, such as the use of a deadly weapon or the use of force likely to produce great bodily injury. Compare section 240 with sections 244-245.5 of the CPC.

The Petitioner contends that robbery and felonious assault are “interchangeable” and cites to *People v. Sutton*, 35 Cal. App. 3d. 264, 270-271, 110 Cal. Rptr. 635, (1973)(citing *People v. Guerin*, 22 Cal. App. 3d. 775, 782 (1972)), and *People v. Salazar*, 194 Cal. App.3d 634, 639 (1987), to support her assertion that robbery under section 211 is substantially similar to felonious assault, as robbery encompasses all the elements of assault. However, the cases cited do not make a generalized finding that any robbery necessarily encompasses all the elements of assault; rather, the courts in each case determined that all the elements of assault were charged and proven in furtherance of the robbery. Moreover, the California Supreme Court has concluded that assault with a deadly weapon is not a lesser included offense of robbery. *People v. Wolcott* at 524-26. The California Supreme Court specifically held that a robbery offense could be committed without an attempt to inflict violent injury and without the present ability to do so, both of which are required elements of an assault under California law. *Id.* Additionally, robbery under section 211 does not involve any of the protected classes of people set forth in felony assault. Compare section 211 with sections 245(a)(1)-(3), 245(b)-(d) and 245.5 of the CPC. Finally, the force required for robbery is not “force likely to produce great bodily injury,” an essential element for an assault to be classified as a felony under California law. Nor do the elements of assault involve the “felonious taking” requisite to robbery. These significant differences in the nature and elements of robbery and felonious assault show these crimes are not substantially similar.

C. The Remaining Eligibility Criteria for U-1 Classification

U-1 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. As the

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Petitioner has not established that she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner, a victim of robbery and grand theft, has not established that she was a victim of felonious assault or any other qualifying crime. Nor has she established that the nature and elements of the crime committed against her are substantially similar to felonious assault or any other qualifying crime. Accordingly, as the Petitioner has not satisfied the eligibility criteria for U nonimmigrant status, the U petition remains denied.

ORDER: The appeal is dismissed.

Cite as *Matter of N-M-P-*, ID# 483809 (AAO Aug. 29, 2017)