



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 7746835

Date: MAR. 10, 2021

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” 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 Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a statement asserting that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office reviews 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 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). “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). The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated 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, 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.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 his U petition in February 2015 with a Supplement B signed and certified by a lieutenant in the [redacted] Police Department in [redacted] California (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment," "Felonious Assault," and "Other: Robbery." The certifying official cited to sections 211 (robbery) and 236 (false imprisonment) of the California Penal Code (Cal. Penal Code) 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 that "[t]hree unknown [s]uspects knocked on [the Petitioner]'s door and asked to use [the] restroom. All three suspects entered and then two other suspects entered [the Petitioner]'s house and pushed [him] on the sofa while three suspects searched through the bedrooms. The suspects then fled with items found in [the Petitioner's] house." The police report accompanying the Supplement B identifies the incident as a strong-arm robbery of an inhabited dwelling under section 212.5(a) of the Cal. Penal Code. The police report also contains a case narrative which mirrors the information in the Supplement B, noting that officers responded to the scene upon the report of a robbery and listing the crime investigated as robbery of an inhabited dwelling under section 212.5 of the Cal. Penal Code.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Director noted that robbery is not a qualifying crime and determined that the Petitioner had not established that the nature and elements of robbery under California law are substantially similar to a qualifying criminal activity. On appeal, the Petitioner argues the Director erred in determining he was not the victim of the qualifying crimes of felonious assault and false imprisonment because the certifying official indicated on the Supplement B that those crimes were investigated or prosecuted. The Petitioner also argues that robbery under California law is substantially similar to the qualifying crimes of felonious assault and false imprisonment. These arguments are unavailing.

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.

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

The Act requires U petitioners to demonstrate that they 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 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). 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, 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 . . .”).

In this case, the Petitioner has not met his burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. We acknowledge that the certifying official checked boxes on the Supplement B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault and false imprisonment and cited to section 236 of the Cal. Pen. Code, the provision of California law dealing with false imprisonment. However, the Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crimes of felonious assault or false imprisonment as perpetrated against the Petitioner. 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”).

Beyond the checked boxes and citation to California’s equivalent to the qualifying crime of false imprisonment described above, the certifying official did not reference the crimes of false imprisonment or assault as perpetrated against the Petitioner elsewhere in the Supplement B. The accompanying police report, produced shortly after the criminal activity occurred, did not identify any type of assault or false imprisonment as perpetrated against the Petitioner; instead, it identified the offense committed as strong-arm robbery of an inhabited dwelling under section 212.5(a) of the Cal. Penal Code. The narrative section of the police report likewise did not reference any assault or false imprisonment provision under California law; it described officers responding to a report of robbery and listed only robbery of an inhabited dwelling under section 212.5 of the Cal. Penal Code. As a result, and as outlined in the Director’s decision, the Supplement B’s checked boxes and citation to false imprisonment under California law are inconsistent with the information outlined in the remainder of the document and with the police report, which served as the basis for the certification of the Supplement B. The Petitioner has not concretely addressed or submitted any additional evidence relevant to these inconsistencies or otherwise established that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault and false imprisonment as perpetrated against him after initially classifying and describing the offense as a robbery of an inhabited dwelling. The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including

the he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); Chawathe, 25 I&N Dec. at 375. Moreover, 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). Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault, false imprisonment, or any other qualifying criminal activity as perpetrated against him. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and he was the victim of, robbery of an inhabited dwelling.

C. Robbery under California Law is Not Substantially Similar to the Qualifying Crimes of Felonious Assault or False Imprisonment

As noted by the Director, robbery is not a qualifying crime included in section 101(a)(15)(U)(iii) of the Act. Nonetheless, the Petitioner asserts that robbery of an inhabited dwelling under section 212.5 of the Cal. Penal Code is substantially similar to the qualifying crimes of felonious assault and false imprisonment. The Act provides that “any similar activity” to the qualifying crimes may also be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. However, 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); see also Interim Rule, 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 violations.”).

California law defines assault as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2020). For an assault to be classified as a felony, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. See e.g., Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2020) (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults). At the time of the incident against the Petitioner, California law 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.” Cal. Penal Code § 211 (West 2013). Robbery in the first degree under section 212.5(a) of the Cal. Penal Code occurs, pertinently to this case, when it “is perpetrated in an inhabited dwelling house[.]” Cal. Penal Code § 212.5(a) (West 2013).

We acknowledge that robbery under sections 211 and 212.5(a) of the Cal. Penal Code are felony offenses. However, robbery is otherwise distinct in its elements from California’s equivalents to the qualifying crime of felonious assault. Robbery requires a taking of personal property as a required element of the offense, which is not required under any of California’s felonious assault provisions. Also unlike the felonious assault provisions, robbery does not require the use of a weapon, force likely to produce great bodily injury, or any other aggravating circumstance, and it can be committed “without attempting to inflict violent injury, and without the present ability to do so” *People v. Wolcott*, 665 P.2d 520, 525 (Cal. 1983). Based on the foregoing, the Petitioner has not established that the nature and elements of robbery are substantially similar to a felonious assault under California law.

In regard to false imprisonment, section 236 of the Cal. Penal Code defines the crime as “the unlawful violation of the personal liberty of another.” Cal. Penal Code § 236 (West 2020). As noted above, robbery is defined 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.” Cal. Penal Code § 211. Comparing these offenses as defined under California law, robbery and false imprisonment do not share similar elements, as robbery is the taking of personal property by means of force and fear, while false imprisonment is a violation of personal liberty. See *People v. Reed*, 78 Cal. App. 4th 274, 282 (Cal. 2000) (noting that the statutory elements of robbery and false imprisonment are different “even though they may, on occasion, share some elements”). Based on the foregoing, the Petitioner has not established that the nature and elements of robbery are substantially similar to false imprisonment under California law. Therefore, the Petitioner has not demonstrated that he was a victim of any qualifying crime or “any similar activity” to the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

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

ORDER: The appeal is dismissed.