



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 8048957

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 new evidence, evidence previously in the record, and a brief asserting that he was the victim of qualifying criminal activity. 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 January 2015 with a Supplement B signed and certified in August 2014 by a detective in the [redacted] Police Department in [redacted] Texas (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felony Assault," "Attempt to commit any of the named crimes," and "Other: Robbery." When asked to provide the specific statutory citations investigated or prosecuted, the certifying official crossed out a reference to section 22.02 of the Texas Penal Code (Tex. Penal Code Ann.), which criminalizes aggravated assault, and instead wrote in section 29.02 of the Tex. Penal Code Ann., which criminalizes robbery, along with his or her badge number. When asked to provide a description of the criminal activity being investigated or prosecuted, one handwritten entry lists "Aggravated Assault – victim report and medical records[,] Theft – victim attempted to prevent the theft" while another handwritten entry, again signed by the certifying official and listing his or her badge number, provides that the case was "being investigated as a robbery." When asked to provide a description of any known injury to the Petitioner, the handwritten entry indicated that the Petitioner "had numerous lacerations about the face and head. The [Petitioner] was dragged by the perpetrator's vehicle causing road rash on the [Petitioner]'s shoulders as well as his leg. [The Petitioner] received emergency medical treatment. [The Petitioner] was also struck in the face with a bat . . . [and] was treated a second time at the hospital."

The police report submitted with the U petition provided that the offense investigated was "THEFT-UNDER \$50." The police report also provided details of the offense, noting that officers were "dispatched to the listed location for an assault in progress" and that the Petitioner reported a perpetrator entering his convenience store, stealing a case of beer, leaving the store, and entering a vehicle in an attempt to flee. The Petitioner further reported that he gave chase and grabbed onto the vehicle, which began to drive away. The Petitioner explained that he was dragged by the vehicle and sustained injuries, including what the police report described as "visible lacerations on his head and face[.]" and "visible road rash on his shoulders as well as . . . left leg." The police report noted that the Petitioner was transported to the hospital for his injuries and "was given a case number for the theft. No further action was taken."

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.

In response to a request for evidence issued by the Director in January 2019, the Petitioner submitted an updated Supplement B signed and certified in March 2019 by a different certifying official with the [redacted] Police Department. On the updated Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault” and “Attempt to Commit Any of the Named Crimes,” and listed sections 22.02 and 29.02 of Tex. Penal Code Ann. as the specific statutory citations investigated or prosecuted as perpetrated against the Petitioner. The narrative portion of the updated Supplement B provided that the incident was being investigated as “a Robbery” as well as “a Felonious Assault,” and otherwise mirrors the original Supplement B.

After reviewing the evidence in the record, the Director denied the U petition, concluding that evidence in the record indicated that the criminal activity investigated or prosecuted as perpetrated against the Petitioner was robbery under Texas law and that the crime of robbery is not a qualifying crime. As a result, the Director determined that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Petitioner filed an appeal of that decision to this office. In addition to submitting a brief and evidence previously in the record, the Petitioner submits a letter from the [redacted] Police Department explaining that the crime forming the basis for the U petition was investigated as a robbery, not theft under \$50 as indicated on the police report.

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 (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; 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 . . .”).

On appeal, the Petitioner argues that the Director erred in concluding he was not the victim of the qualifying crime of felonious assault because the updated Supplement B indicates that he was the victim of felonious assault and cites to aggravated assault under section 22.02 of the Tex. Penal Code Ann., Texas’ felonious assault equivalent. We acknowledge that, in the updated Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault” and that the incident was being investigated as a “Felonious Assault.” We also acknowledge that the certifying official cited to aggravated assault under section 22.02 of the Tex. Penal Code Ann. as one of two statutory citations investigated or prosecuted as perpetrated against the Petitioner. However, the updated 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 crime of felonious assault 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”).

As a preliminary matter, in the original Supplement B submitted with the Petitioner’s U petition and completed approximately one month after the incident in question, the certifying official specifically crossed out the reference to aggravated assault under Texas law and instead indicated that law enforcement investigated or prosecuted robbery under section 29.02 of the Tex. Penal Code Ann. as perpetrated against the Petitioner. Similarly, the narrative portion of the original Supplement B contains two discrepant descriptions of the criminal activity investigated or prosecuted, and the description signed by the certifying official and accompanied by his or her badge number indicated that the crime was investigated as a robbery. Further, the police report, which both accompanied and served as the basis for the certification of the original Supplement B, indicated that law enforcement detected and investigated as perpetrated against the Petitioner the crime of theft under \$50 as defined under Texas law; it did not reference any assault as perpetrated against Petitioner, or an attempt to do so.² Finally, the updated Supplement B was signed certified by a different certifying official more than four years after the incident in question and the certification of the original Supplement B.

Accordingly, and as outlined in the Director’s decision, the updated Supplement B’s checked box and citation to aggravated assault under Texas law are inconsistent with the remainder of the evidence in the record. The Petitioner has not concretely addressed or submitted any additional evidence relevant to these inconsistencies. Instead, the Petitioner submits on appeal a letter from the [redacted] Police Department expressly providing that the crime forming the basis for the U petition was investigated as a robbery. The letter does not indicate that any sort assault was at any time investigated or prosecuted as perpetrated against him. The letter also does not address the handwritten amendments or discrepancies in the original Supplement B or otherwise explain the reasons behind the additional statutory citation to aggravated assault in the updated Supplement B.

In these proceedings, the Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that 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). Considering the totality of the evidence in the record, the Petitioner has not established by a preponderance of the evidence that that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault or any other qualifying crime as perpetrated against him. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, robbery.

² Contrary to the Supplement B’s indication that the Petitioner was “struck in the face with a bat . . . [and] was treated a second time at the hospital[.]” there is no reference in the police report or any other evidence in the record indicating that he was struck with, and suffered any injury from, a bat during the incident in question.

C. Robbery Under Texas Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner also contends that he was the victim of qualifying criminal activity because the nature and elements of robbery under section 29.02 of the Tex. Penal Code Ann. are substantially similar to those of felonious assault under Texas law. When a certified offense is not a qualifying criminal activity 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. Section 101(a)(15)(U)(iii) of the Act (providing that 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”); 8 C.F.R. § 214.14(a)(9) (providing that 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). 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. Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense “involved,” or was “substantially similar” to, a “qualifying crime or qualifying criminal activity” as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9).

At the outset, and as argued by the Petitioner on appeal, we acknowledge that robbery under Texas law may include assaultive elements. See *Ex parte Hawkins*, 6 S.W.3d 554, 559-60 (Tex. Crim. App. 1999) (discussing the assaultive nature of robbery under the Texas Penal code). However, 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, not an underlying assault which occurred during the course of a separate and distinct felony offense. 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); 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).

In this case, at the time of the incident forming the basis for the U petition, Texas law provided that a robbery occurs if “in the course of committing theft . . . and with intent to obtain or maintain control of the property, he: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.” Tex. Penal Code Ann. § 29.02(a)(1), (2) (West 2014). Robbery is a felony offense under Texas law. *Id.* at § 29.02(b).

Texas law provides that a person commits misdemeanor assault if he or she:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Tex. Penal Code Ann. § 22.01(a)(1)-(3) (West 2014). In order for an assault to be classified as a felony in Texas, a person must, in pertinent part, commit an underlying assault and cause serious bodily injury to another or use or exhibit a deadly weapon during the commission of it. Tex. Penal Code Ann. § 22.02(a)(1), (2) (West 2014).

We acknowledge that robbery and aggravated assault are felony offenses under Texas law. However, the elements of robbery are otherwise distinct. In this regard, robbery occurs only in the course of committing a theft and requires intent to obtain or maintain control of another's property, which is not required under any of Texas' felonious assault provisions. Robbery also differs in regard to the requisite level of harm, requiring only bodily injury whereas an aggravated assault requires serious bodily injury. See *McCrary v. State*, 327 S.W.3d 165, 174 (Tex. App. 2010) (noting that aggravated assault requires proof of "serious bodily injury" and aggravated robbery only requires proof of "bodily injury"). Accordingly, the nature and elements of robbery under section 29.02 of the Tex. Penal Code Ann. are not substantially similar to those of Texas' felonious assault equivalents. Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that he was a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act.

D. 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.