



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 7866762

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 evidence previously in the record and a brief 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.<sup>1</sup> 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 March 2015 with a Supplement B signed and certified in October 2014 by an assistant chief in the [redacted] Police Department in [redacted] Texas (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other: Terroristic Threat." When asked to provide the specific statutory citations investigated or prosecuted, the certifying official wrote "Terroristic Threat" in the space provided without any citation to Texas law. When asked to provide a description of the criminal activity being investigated or prosecuted and any known injury to the Petitioner, the certifying official indicated that the Petitioner "went to get a change of close [sic] from his car when the suspect approached demanding that the [Petitioner] give the suspect the keys to the [Petitioner]'s car. The [Petitioner] refused to give the keys to the suspect and the suspect threatened to kill the [Petitioner]." When asked to provide a description of any known injury to the Petitioner, the certifying official indicated that the Petitioner "did not sustain any injuries as a result of the incident."

The police report submitted with the U petition provided that the offenses investigated were "terroristic threat" and "criminal mischief." The police report also provided details of the offense, noting that the "suspect broke off car antenna to [the Petitioner's] vehicle and stated he would kill them if [the Petitioner] and witn[ess] did not give up keys." Court records submitted with the U petition provided that the suspect was charged with making terroristic threats and criminal mischief, both misdemeanors, after he threatened "to commit an offense involving violence, namely AGGRAVATED ASSAULT upon [the Petitioner] with the intent to PLACE [THE PETITIONER] IN FEAR OF IMMEDIATE SERIOUS BODILY INJURY." Court records indicate that the perpetrator was granted deferred adjudication of guilt in regard to the charge of criminal mischief.

In response to a request for evidence issued by the Director in October 2018, the Petitioner submitted an updated Supplement B signed and certified in November 2018 by a different certifying official with the [redacted] Police Department. On the updated Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felony Assault" and listed section 22.01 of the Texas Penal Code (Tex. Penal Code Ann.), which criminalizes assault, as the specific statutory citation investigated or prosecuted as perpetrated against the

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<sup>1</sup> 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.

Petitioner. When asked to provide a description of the criminal activity being investigated or prosecuted and any known injury to the Petitioner, the certifying official indicated that the Petitioner “was threatened by the suspect when [he] refused to give the suspect his keys” and that the Petitioner “did not sustain any injuries in this incident.” The certifying official further provided that the “suspect was arrested and charged with misdemeanor Terroristic Threat [and t]he case was later dismissed. This case has been disposed of and no further action is needed.”

After reviewing the evidence in the record, the Director denied the U petition, concluding that the crime of terroristic threat is not a qualifying crime and that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Petitioner filed a motion to reopen, which the Director dismissed, concluding that the grounds for denial of the U petition had not been overcome. The Petitioner then filed the instant appeal. On appeal, the Petitioner contends that he was the victim of the qualifying crime of felonious assault or that the crime of terroristic threat is substantially similar to the qualifying crime of extortion.

#### 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 . . .”).

In regard to the Petitioner’s contention that he was the victim of the qualifying crime of felonious assault, we acknowledge that, on 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.” We also acknowledge that the certifying official cited to assault under section 22.01 of the Tex. Penal Code Ann. as the specific statutory citation 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 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”).

The original Supplement B submitted with the Petitioner's U petition did not reference any assault provision under Texas law or otherwise indicate that an assault was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The police report, which served as the basis for and accompanied the original Supplement B with the U petition, did not reference any assault as perpetrated against Petitioner, or an attempt to do so. Instead, the report indicated that law enforcement detected and investigated as perpetrated against the Petitioner the crimes of terroristic threat and criminal mischief under Texas law. Further, the updated Supplement B was certified by a different certifying official in the [redacted] Police Department four years after the certification of the original Supplement B and approximately ten years after the incident in question. The updated Supplement B was not accompanied by a statement from the certifying official or any other evidence explaining the reasons behind the additional statutory citation, and otherwise provided that the perpetrator "was arrested and charged with misdemeanor Terroristic Threat [and t]he case was later dismissed. This case has been disposed of and no further action is needed." Finally, although the charging document in the record provided that the perpetrator threatened to commit an aggravated assault against the Petitioner, this language was included in the court record as the factual basis to support a charge against the perpetrator for misdemeanor terroristic threat, and does not establish that law enforcement detected, investigated, or prosecuted any provision involving assault as perpetrated against the Petitioner.

Finally, and critically, at the time of the offense Texas law defined assault, in pertinent part, as "intentionally or knowingly threaten[ing] another with imminent bodily injury. . . ." Tex. Penal Code Ann. § 22.01(a) (West 2007). For an assault to be classified as a felony, however, an aggravating factor must be present, such as an assault against a specific class of persons, the use of a deadly weapon, or when the assault causes serious bodily injury. See e.g., Tex. Penal Code Ann. §§ 22.01(b), 22.02 (West 2020) (outlining specific classes of persons and other aggravating factors for felony-level assaults). The original Supplement B, the updated Supplement B, and the police report underlying the incident do not cite to or reference any felony-level assault provision under Texas law as detected, investigated, or prosecuted as perpetrated against the Petitioner.

In these proceedings, the Petitioner bears the burden of establishing eligibility, 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 foregoing, the Petitioner has not established by a preponderance of the evidence 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, terroristic threat.

### C. Terroristic Threat Under Texas Law is Not Substantially Similar to the Qualifying Crime of Extortion

The Petitioner also contends that he was the victim of qualifying criminal activity because the nature and elements of terroristic threat under section Tex. Penal Code Ann. § 22.07 are substantially similar

to those of the qualifying crime of extortion as defined under the Model Penal Code.<sup>2</sup> 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 time of the incident, section 22.07 of the Tex. Penal Code Ann. provided that a “person commits [the offense of terroristic threat] if he threatens to commit any offense involving violence to any person or property with intent to: . . . place any person in fear of imminent serious bodily injury.” Tex. Penal Code Ann. § 22.07(a)(2) (West 2005). Conversely, under the Model Penal Code, a person is guilty of theft by extortion “if he purposely obtains property of another by threatening to[,]” in pertinent part, “inflict bodily injury on anyone or commit any other criminal offense[.]” Model Penal Code § 223.4(1) (West 2019). We acknowledge that both offenses can require the element of threatening to commit an offense involving bodily injury. However, the offenses are otherwise distinct in their elements. Notably, extortion under the Model Penal Code provides that a person “purposely obtain[] property of another” as a required element of the offense, an element not required under section 22.07 of the Tex. Penal Code Ann. Further, the offense of terroristic threat requires placing a person in fear of imminent serious bodily injury while extortion under the Model Penal Code requires only a threat of bodily injury. Based on the foregoing, the Petitioner has not established the nature and elements of terroristic threat under section 22.07 of the Tex. Penal Code Ann. are substantially similar to those of extortion under the Model Penal Code and has not demonstrated that he was a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act.

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<sup>2</sup> There is no enumerated crime of extortion in the Tex. Penal Code Ann. Ex parte Perry, 471 S.W.3d 63, 114 (Tex. App. 2015), aff’d in part, rev’d in part, 483 S.W.3d 884 (Tex. Crim. App. 2016). However, “vestiges survive within the bribery offense under section 36.02 and the theft offense created by section 31.03. The theft offense—which was expressly intended to subsume ‘extortion’ and various other theft-related crimes previously known to the law—in part proscribes the appropriation of another’s property through consent obtained by ‘coercion,’ thereby incorporating the same ‘coercion’ element and definition as does section 36.03(a)(1).” Id. The Petitioner does not argue or otherwise address whether terroristic threat is similar to bribery or theft as defined under Texas law.

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.