



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

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

In Re: 30666474

Date: APR. 25, 2024

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity. *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), concluding that the record did not establish that the Petitioner was a victim of qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

U petitioners must establish that qualifying criminal activity was perpetrated against them, and that the certifying agency detected, investigated, or prosecuted this qualifying criminal activity. The record as a whole must support the certification of that victimization in order to establish a petitioner’s eligibility for U nonimmigrant status. Section 214(p)(1), (4) of the Act; 8 C.F.R. § 214.14(c)(2)(ii), (4). 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).

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 activity “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 the elements of the offenses are substantially similar to the statutory 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, U petitioners must submit Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) from a law enforcement official certifying a petitioner’s helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B is required evidence which informs, but does not solely determine, whether a U petitioner is a victim of qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i)-(ii), (c)(4). Although a petitioner may submit any relevant, credible evidence for consideration, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed the U petition in June 2016 with a Supplement B signed and certified by a designated officer of the [redacted] Sheriff’s Office (certifying official); the U petition was based on an assault that was committed in 1997. The certifying official checked the box to indicate that felonious assault was the qualifying criminal activity. In support of this certification, the certifying official cited to reckless endangerment, threatening and intimidating, assault, and aggravated assault in Arizona’s revised annotated statutes (Ariz. Rev. Stat. Ann.) as the crimes that were investigated or prosecuted: Ariz. Rev. Stat. Ann. §§ 13-1201, 13-1202, 13-1203, 13-1204. When asked to describe the criminal activity, the certifying official noted that the Petitioner was assaulted by his neighbor, who “threw a full beer bottle at his face, kicked him to the ground, pulled his hair, and punched him in the head profusely.” The Supplement B indicates that the Petitioner suffered bruises and contusions and suffered injuries to his face after being hit with the beer bottle. It notes that the Petitioner obtained an order of protection against the perpetrator.

The [redacted] Sheriff’s Office prepared a Traffic Ticket and Complaint (incident report) indicating that the Petitioner was the victim of misdemeanor assault and cited to Ariz. Rev. Stat. Ann. § 13-1203(A). The Petitioner also submitted several continuation reports detailing additional interviews by other officers who responded (continuation reports). The incident report listed the Petitioner as the victim of a misdemeanor assault. The continuation reports indicated that the Petitioner’s neighbor threw a full beer bottle at the Petitioner, which struck the Petitioner on the face. The Petitioner fell to the ground, and his neighbor began to kick and punch him. The responding officers noted swelling and a cut on the Petitioner’s lower lip.

The Director denied the petition, finding that no qualifying crime had been investigated, detected, or prosecuted. The Director indicated that the contemporaneous police reports referenced misdemeanor assault rather than aggravated assault. The Director further noted that an aggravated assault under Ariz. Rev. Stat. Ann. § 13-1204 could be committed in various ways, including by assaulting an individual with a deadly weapon or dangerous instrument, or causing serious physical injury during the assault. The Director indicated that serious physical injury in Arizona must create a reasonable risk of death or cause serious and permanent disfigurement, serious impairment of health, or loss or

protracted impairment of the function of a bodily organ or limb. The Director concluded that this level of injury was not suffered. The Director then analyzed assault with the use of a deadly weapon or dangerous instrument and determined that the beer bottle was not a deadly weapon or used in such a way that it could be considered a dangerous instrument.

On appeal, the Petitioner asserts that the certified crime of aggravated assault is supported by the underlying record, and the certifying official had a basis to determine it had been detected. The Petitioner indicates that aggravated assaults may be committed in Arizona with the use of a dangerous instrument, and that, contrary to the Director's determination, the beer bottle as used in the assault constitutes a dangerous instrument. The beer bottle is referenced in the initial reports, and therefore, despite the arresting officers' choice to cite to misdemeanor assault, an aggravated assault was nonetheless detected. The Petitioner asserts that the U petition should be approved as he was the victim of qualifying criminal activity.

B. Law Enforcement Detected the Qualifying Crime of Felonious Assault

As stated above, the Act requires that petitioners "ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful" to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. "Investigation or prosecution" of qualifying criminal activity "refers to 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).

Because law enforcement certified through the Supplement B that felonious assault was investigated, detected, or prosecuted, we consider the documents prepared by law enforcement in their totality. The Director was correct that the underlying incident report and continuation only included statutory citations and references to misdemeanor assault. However, since the Supplement B also certified felonious assault, we analyze the reports provided to determine whether felonious assault was detected. The information included in contemporaneous reports is particularly relevant to the determination of what law enforcement detected, as it outlines the information that was provided to investigating officers at the time of the offense. Here, the incident report indicates that the perpetrator used a beer bottle during the commission of the assault, which was thrown at the Petitioner and struck him in the face.

After considering the contents of the incident report and continuation reports, the Petitioner has established that law enforcement detected an aggravated assault under Arizona law. An assault in Arizona is committed when physical injury is caused to another person intentionally, knowingly, or recklessly; when a person is reasonably apprehensive of imminent physical injury, or whether a perpetrator knowingly touches a person "with the intent to injure, insult, or provoke such person." Ariz. Rev. Stat. Ann. § 13-1203. While assault is generally classified as a misdemeanor, Arizona punishes assault as a felony under various circumstances. As noted above, this includes assaults carried out with the use of a dangerous instrument. Ariz. Rev. Stat. Ann. § 13-1204.

The incident report first establishes that law enforcement detected an assault. The perpetrator's actions in throwing the beer bottle at the Petitioner, striking him, and causing a cut and swelling to his lip meet

the Arizona definition of assault by intentionally causing physical injury. The incident report also reflects that law enforcement detected an aggravated assault, because the beer bottle used in the assault meets the definition of a dangerous instrument in Arizona.

The term “dangerous instrument” is defined in Arizona as “anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.” Ariz. Stat. § 13-105(12). Whether an item is a dangerous instrument is a question of fact that is typically left to a jury. Juries are charged with reviewing the circumstances under which the item was used and determining whether it is readily capable of causing death or serious physical injury. Court decisions from Arizona acknowledge that almost any household item could be considered a dangerous instrument, depending on the manner of use. *See, e.g., State v. Rodriguez*, 484 P.3d 669, 672 (Ariz. Ct. App. 2021) (whipping electrical cord of appliance at victim’s head supported aggravated assault conviction for use of dangerous instrument); *State v. Francisco*, 46 P.3d 878, 880 (Ariz. Ct. App. 2020) (striking victim in the face with miniature souvenir baseball bat was use of a dangerous instrument); *State v. Fatty*, 724 P.2d 1256, 1258-59 (Ariz. Ct. App. 1986) (upholding sock as dangerous instrument when placed in mouth or throat); *State v. Schaffer*, 48 P.3d 1202, 1205 (2002) (using prosthetic arm during altercation was dangerous instrument although arm remained attached to defendant’s body).

While the Petitioner’s case was not ultimately prosecuted as an aggravated assault and a jury did not directly reach a determination as to the use of a dangerous instrument, the cases cited above show the broad latitude afforded to triers of fact in reaching this determination. The use of the beer bottle in the Petitioner’s assault, as reflected in the contemporaneous law enforcement reports, falls in line with the case law on dangerous instruments. The Petitioner has determined, by a preponderance of the evidence, that he was the victim of qualifying criminal activity; law enforcement detected an aggravated assault during the investigation.

The Director did not address the remaining elements of eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. We will remand the case to the Director for further consideration of the Petitioner’s eligibility and the issuance of a new decision on the U petition and the waiver application.

III. CONCLUSION

On appeal, the Petitioner has overcome the Director’s determination that the criminal activity did not fall under one of the enumerated categories of qualifying criminal activity to establish U petition eligibility. The record does not otherwise establish the Petitioner’s eligibility for U nonimmigrant classification as the remaining eligibility criteria were not discussed by the Director. We will therefore remand the case to the Director for determination of the remaining eligibility criteria.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.