



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

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

In Re: 20201604

Date: FEB. 24, 2022

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 at 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 Nebraska Service Center Director denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that he did not establish he was a victim of qualifying criminal activity. The denial of the Petitioner’s U petition is now before us on appeal. 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). We review the questions in this matter *de novo*. See *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

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. Petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the

qualifying criminal activity.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of 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 their U petition in April of 2016 accompanied by a Supplement B in which the certifying official checked the box under Part 3.1 indicating that the Petitioner was the victim of criminal activity involving or similar to robbery. Under Part 3.3, the official identifies the statutory citation for the criminal activity being investigated or prosecuted as section 14-87 of North Carolina General Statutes Annotated (NCGS), which is “Robbery with firearms or other dangerous weapons” that we will refer to as armed robbery. Within the narrative portion characterizing the criminal activity, the official notes that the Petitioner advised law enforcement that a suspect pointed a handgun at him after the suspects had removed another person’s property from a vehicle.

The record also contains a police report that lists the event as a robbery. The officer describes the incident as multiple suspects who robbed someone other than the Petitioner of their personal belongings while she was getting fuel in her car. The report indicates that as the Petitioner was yelling at the suspects to stop, one of them pointed a firearm in his direction. The report reflects that there were no injuries during the incident and that the suspects fled the scene in another vehicle.

The Director denied the U petition, concluding that the Petitioner did not establish that he was the victim of qualifying criminal activity. The Director noted that armed robbery is not a qualifying crime and determined that the Petitioner had not established that the nature and elements of armed robbery under North Carolina law are substantially similar to a qualifying criminal activity. On appeal, the Petitioner does not contest the determination that armed robbery is not a qualifying crime, but he does argue that Director erred in concluding that robbery under North Carolina law is not substantially similar to the qualifying crimes of felonious assault, false imprisonment, and kidnapping.

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

The Act requires U petitioners to demonstrate their helpfulness 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

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.

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) (2007 interim rule), 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 . . .”).

The Supplement B indicates that the Petitioner is a victim of criminal activity involving or similar to violations of robbery and cites the North Carolina statute for armed robbery. The record does not demonstrate, and the Petitioner does not claim, that qualifying criminal activity was detected, investigated, or prosecuted by law enforcement. Rather, he claims that the crime committed against him—armed robbery—is substantially similar to aggravated assault, false imprisonment, and kidnapping under the NCGS.

C. The Crime Detected, Investigated, or Prosecuted is Not Substantially Similar to a Qualifying Crime

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 such 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. *Id.* 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).

Within the appeal, the Petitioner asserts that the “elements of the felony crime of Robbery with firearms or armed robbery are substantially similar to” the qualifying crimes of felonious assault, false imprisonment, and kidnapping. The criminal activity that law enforcement detected, investigated, or prosecuted was armed robbery. The NCGS for robbery at the time of the offense against the Petitioner provided:

- (a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a

person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. Ann. § 14-87(a). The Petitioner cites to section 14-32 of the NCGS (felonious assault with deadly weapon with intent to kill or inflicting serious injury). That statute provides:

- (a) Any person who assaults another person with a deadly weapon with intent to kill and inflicts serious injury shall be punished as a Class C felon.
- (b) Any person who assaults another person with a deadly weapon and inflicts serious injury shall be punished as a Class E felon.
- (c) Any person who assaults another person with a deadly weapon with intent to kill shall be punished as a Class E felon.

N.C. Gen. Stat. Ann. § 14-32. The Petitioner implies that this offense is the violation of North Carolina law that constitutes the felonious assault of which he was the victim. The only comparison that the Petitioner offers between the criminal activity that law enforcement detected, investigated, or prosecuted—armed robbery—and this felonious assault statute is the use of a firearm under both. However, some 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. Additionally, section 14-32 of the NCGS relates to felonious assaults with a deadly weapon in which the offender either has the intent to kill or who inflicts serious injury on another, unlike armed robbery. This further establishes that the Petitioner has not satisfied his burden to demonstrate that he was the victim of a crime that is substantially similar to a felonious assault. We also note that the North Carolina offense of robbery with firearms or dangerous weapons contains the lesser included offense of simple—or misdemeanor—assault, but not a felony-level assault. *See State v. Tarrant*, 320 S.E.2d 291, 294 (1984).

Next, the Petitioner notes that he was the victim of an assault under section 14-34 of the NCGS that provides: “If any person shall point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of a Class A1 misdemeanor.” The Petitioner then infers that when a person is the victim of the offense of assaulting by pointing gun (a misdemeanor), at the same time as armed robbery (a felony), they are the victim of a felonious assault. We acknowledge, as does the Petitioner, that North Carolina’s armed robbery statute may include assaultive elements. *See State v. Edwards*, 272 S.E.2d 384, 392 (1980) (finding that misdemeanor assault “is a lesser included offense of armed robbery . . . because it would be impossible to commit a robbery with a firearm without assaulting someone with a deadly weapon”). However, we do not agree that armed robbery under North Carolina law inherently includes an assault at the felony level. *See id.* (finding alternatively that “it does not follow that felonious assault with a deadly weapon . . . is also a lesser included offense of armed robbery”).

This is an important distinction because 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 (e.g., during an armed robbery). *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).

As we noted above, at the time of the incident forming the basis for the U petition, North Carolina law provided that an armed robbery occurs if a person threatening the use of a firearm endangers or threatens the life of another person, while unlawfully taking another person’s personal property. This is a felony offense under NCGS section 14-87(a). North Carolina provides that a person commits misdemeanor assault if they point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded. N.C. Gen. Stat. Ann. § 14-34. In order for an assault offense to be classified as a felony in North Carolina, a person must—as it relates to the present case—carry out an underlying assault and commit a specified aggravating factor such as having the intent to kill or by inflicting serious injury (NCGS section 14-32) or inflicting serious bodily injury or physical injury by strangulation (NCGS section 14-32.4).

We acknowledge that robbery and some assaults accompanied by aggravating factors are felony offenses under North Carolina law. However, the elements of armed 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 North Carolina’s felonious assault provisions. Armed robbery also differs in regard to the requisite level of harm, requiring only the life of a person be either endangered or threatened, whereas a felony-level assault requires serious injury (*State v. King*, 468 S.E.2d 232, 237 (1996)), or serious bodily injury or physical injury by strangulation (*State v. Rushing*, 836 S.E.2d 262, 265 (2019)). Accordingly, the nature and elements of armed robbery under section 14-87 of the NCGS are not substantially similar to those of North Carolina’s felonious assault equivalents. Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that he was a victim of the qualifying criminal activity of felonious assault found at section 101(a)(15)(U)(iii) of the Act.

Next, the Petitioner argues that armed robbery in North Carolina “also shares substantial elements with the crime of False Imprisonment.” The Petitioner further states that in North Carolina, false imprisonment is a common-law crime, and he offers the definition as “the intentional or unlawful restraint of a person without the person’s consent.” First, even though the Petitioner provides what he characterizes as a common-law definition of false imprisonment, he does not offer the source of that common-law definition and we are unable to determine whether his characterization is sufficiently comprehensive of the common law. Additionally, the Petitioner does not provide any evidence demonstrating what the state of North Carolina relies on as its accepted common-law definition of false imprisonment, which would permit us to compare the nature and elements of that definition to the armed robbery offense that law enforcement detected, investigated, or prosecuted and to which he was a victim. As a result, the Petitioner has not met his burden to demonstrate that robbery is substantially similar in its nature and elements to false imprisonment under North Carolina law.

Finally, as it relates to the Petitioner's comparison between North Carolina's statutes of armed robbery and kidnapping, we conclude that those statutes are not substantially similar in their nature and elements. Here, we incorporate the definition of armed robbery under section 14-87 of the NCGS as stated above. The Petitioner identifies the following portion of North Carolina's kidnapping statute that he compares with the armed robbery statute:

Any person who shall unlawfully confine, restrain, or remove from one place to another . . . shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of . . . (2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or (3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person

N.C. Gen. Stat. Ann. § 14-39. These statutes differ in both their nature and elements. First, the nature of armed robbery is the forceful taking of another's property, while kidnapping involves the confinement or transportation of an unwilling participant for the purpose of committing a particular felony. Additionally, the Petitioner does not make a comprehensive comparison of the elements for both crimes other than to identify that the purpose of kidnapping is to facilitate the commission of a felony and in his case that felony was armed robbery. As we noted above, simply because there is some 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). As a result, the Petitioner has not demonstrated that armed robbery is substantially similar to any qualifying criminal activity that he identifies on appeal.

D. The Remaining Eligibility Criteria for U-1 Classification

The 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 they were the victim of qualifying criminal activity, or an offense that is substantially similar to a qualifying criminal activity, they necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not met their burden of proof to preponderantly establish that they were the victim of qualifying criminal activity. The record shows that the Petitioner was the unfortunate victim of armed robbery, but this offense is not, does not involve, and is not substantially similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.