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

In Re: 20293909

Date: MAR. 1, 2022

Appeal of Vermont 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 Vermont Service Center (Director) 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 brief asserting that he was the victim of the qualifying crime. The Administrative Appeals Office (AAO) 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; *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 November 2015 with a Supplement B signed and certified by the Deputy Chief of Sex Crimes for the [redacted] State Attorney's Office in [redacted] Illinois (certifying official). The certifying official indicated that the Petitioner was the victim of criminal activity involving Felonious Assault and "Other: Battery/Cause Bodily Harm," and cited to section 5/12-3(A) of chapter 720 of the Illinois Compiled Statutes Annotated (Ill. Comp. Stat. Ann.), "battery" as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, and the involvement of, or any known or documented injury to the Petitioner, the certifying official indicated: "[the Petitioner] was the victim of battery" and "suffered a scrape to the forehead and complained of pain in his right leg and back" and bruising on his right tricep and right thigh.

The police report accompanying the Supplement B classified the incident as a "battery" and indicated that the Petitioner was a "victim" of the offense. The report indicated that the Petitioner had a "small scratch on his forehead but did not have any other visible injuries on him. [The Petitioner] did complain of a sore right leg and a sore back." In a supplemental evidence report, photographs were taken of the Petitioner's bruised right tricep and right thigh. The police report described the Petitioner engaging in a verbal altercation with a friend. Both the Petitioner and the friend were independent trucking contractors at a trucking warehouse. The verbal altercation turned physical when the Petitioner's friend pulled him off his forklift and started kicking and punching him. In his statement the Petitioner submitted in support of his U petition, he corroborated the Supplement B and police report, but described the fight resulted in him "having two black eyes." The Petitioner also submitted court documents showing his friend was charged and convicted of battery under section 5/12-3(A) of chapter 720 of the Ill. Comp. Stat. Ann.

After reviewing the evidence in the record, the Director issued a request for evidence (RFE) for additional evidence that the crime listed on the Petitioner's Supplement B was a crime related to those listed in the statute and implementing regulations. The Petitioner responded timely and submitted a brief, an updated affidavit, copies of court documents, letters of support, bank statements, and copies of photographs, among other documents. The Director subsequently denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. On appeal, the Petitioner argues that he was the victim of the qualifying crime of attempted felonious assault based on the factual circumstances of the offense. The record does not support this claim.

[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[2]

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 contends that the factual circumstances of the crime establish that he was the victim of the qualifying crime of felonious assault. He argues that qualifying criminal activity may occur during the commission of non-qualifying criminal activity and that a felonious assault was committed during the commission of the Battery committed against him. This argument is unavailing, however, as evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence that law enforcement actually detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5).

Battery was identified in the supplement B, in the police report, and in the charging and conviction documents as the crime that was detected, investigated, or prosecuted. In 2005, battery, under section 5/12-3(A) of chapter 720 of the Ill. Comp. Stat. Ann., was not considered felonious conduct and was instead classified as a misdemeanor. Only if the conduct of the battery rose to the level of an aggravated battery was the conduct considered felonious. *See* Ill. Comp. Stat. Ann. ch. 720 § 5/12-4. In part 3.3, the certifying official cited to section 5/12-3(A) of chapter 720 of the Ill. Comp. Stat. Ann., the misdemeanor battery statute, as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. It does not reference the aggravated battery provision under Illinois law. *See* Ill. Comp. Stat. Ann. ch. 720 § 5/12-4.0 The police report and accompanying police documents, similarly, only indicate that law enforcement detected, investigated, or prosecuted a misdemeanor battery as perpetrated against him, and not aggravated battery. In addition, the charging and conviction documents against the Petitioner's friend only show a charge and conviction for misdemeanor battery, and not for aggravated battery. The record supports the Director's conclusion

[2] The Petitioner does not argue that the criminal activity law enforcement detected, investigated, or prosecuted was substantially similar to the statutorily enumerated list of criminal activities at section 101(a)(15)(U)(iii) of the Act, and we will not address the issue further in this decision.

that law enforcement detected, investigated, and prosecuted battery under section 5/12-3(a) of chapter 720 of the Ill. Comp. Stat. Ann. Battery is not specifically listed as qualifying crimes at section 101(a)(15)(U)(iii) of the Act, and the Petitioner does not contest the Director's conclusion that misdemeanor battery is not included in the categories of qualifying crimes.

We acknowledge that in part 3.1 of the Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." However, a certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general category of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Part 3.3 requests the specific statutory citations of the crime or crimes that a certifying agency detected, investigated, or prosecuted that resulted in a petitioner's victimization. Here, the Supplement B, when read as a whole and in conjunction with other relevant evidence in the record, does not establish, by a preponderance of the evidence, that law enforcement actually detected, investigated, or prosecuted the qualifying crime of attempted felonious assault as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating that 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").

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.