



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

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

In Re: 20346673

Date: MAR. 2, 2022

Motion on Administrative Appeals Office 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 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. We summarily dismissed the Petitioner’s subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider our decision and submits a brief asserting that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. 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 review, we will dismiss the combined motion to reopen and to reconsider.

I. LAW

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and shows proper cause for reopening the proceeding or reconsideration of the prior decision. 8 C.F.R. § 103.5(a)(1).

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).

Petitioners bear the burden of proof of demonstrating 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. 369,375 (AAO 2010). 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 March 2016 with a Supplement B signed and certified by a commander of the violent crimes investigation division of the [REDACTED] Police Department in [REDACTED] Minnesota (certifying official). In response to Part 3.1 of the Supplement B, which lists the 28 qualifying crimes listed in section 101(a)(15)(U)(iii) of the Act, the certifying official marked the boxes for felonious assault and related crimes and typed in “ROB PER AGG.” next to the box marked “Other,” as the criminal activities that occurred in [REDACTED] 2014 of which the Petitioner was a victim. In response to Part 3.3, the certifying official listed Minnesota Statutes (MS) sections 609.24 and 609.245, simple robbery and aggravated robbery, respectively, as the specific statutory citations for the criminal activities investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, as well as any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner was punched in the side of the face when two men tried to steal his cell phone and that the Petitioner “suffered pain in his face from the punch” and “suffers from emotional and psychological trauma from the robbery.” The police report accompanying the Supplement B identified the incident as a simple robbery pursuant to MS section 609.24. The narrative section of the police report describes the Petitioner as being “assaulted during a robbery attempt” where he was “punched in the face” but “denied medical attention.” The Petitioner’s affidavit confirmed the information in the incident report, however, also described being kicked on the ground during the robbery. The medical records specified that he sought psychological

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.

counseling in 2021 and presented symptoms of post-traumatic stress disorder that have diminished over time.

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, copies of relevant portions of Minnesota law, an additional statement, affidavits from friends, his arrest records, and previously submitted documents. The Director subsequently denied the U petition, holding that only simple robbery was detected and investigated. She went on to hold that simple robbery, under Minnesota law, was not qualifying criminal activity and not substantially similar to felonious assault. The Director concluded that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity.

On appeal, the Petitioner contended that he was a victim of simple robbery and aggravated robbery under MS sections 609.24 and 609.245, respectively, and was a victim of qualifying criminal activity during the commission of a non-qualifying crime. On motion, the Petitioner reasserts his arguments from his appeal and submits previously submitted documents.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute Qualifying Criminal Activity as Perpetrated Against the Petitioner²

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 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) – 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 Petitioner argues that aggravated robbery constitutes a felonious assault under Minnesota law, which is qualifying criminal activity under the Act. As stated, while all relevant, credible evidence in the record will be considered, USCIS determines, in its sole discretion, the credibility of and the 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). Here, although Part 3.1 of the Supplement B indicated that the Petitioner was a victim of the qualifying criminal activity of felonious assault, the certifying official did not list the

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.

corresponding Minnesota criminal statutes for felony assault in identifying the criminal offenses that were investigated in Part 3.3 of the Supplement B. *See* Minn. Stat. §§ 609.222 and 609.223(1). Further, the underlying police report does not reflect that the certifying agency detected or investigated felonious assault, and the certifying official did not reference any additional information that was considered for concluding that felonious assault was actually detected or investigated.

Additionally, while the record shows that the certifying agency detected aggravated robbery under MS section 609.245, the Petitioner has not established that the offense involves or equates to a felony assault under MS sections 609.222 and 609.223(1). We acknowledge that under Minnesota case law, misdemeanor assault is a lesser-included offense of simple robbery, which is essentially “a theft accomplished by means of an assaultive act.” *State v. Stanifer*, 382 N.W.2d 213, 220 (Minn. Ct. App. 1986). In Minnesota, misdemeanor assault occurs when a person “commits an act with intent to cause fear in another of immediate bodily harm or death,” or “intentionally inflicts or attempts to inflict bodily harm upon another.” Minn. Stat. § 609.224(1); *see* Minn. Stat. § 609.02(10) (nearly identical definition of assault). However, to render an assault a felony under Minnesota law, an additional aggravating factor is required. For instance, a conviction for second degree assault under MS section 609.222 requires that the perpetrator commit an assault “with a dangerous weapon,” or alternatively, that the assault is committed “with a dangerous weapon and inflict[] substantial bodily harm...” (Emphasis added). Similarly, assault in the third degree under MS section 609.223(1) requires the infliction of “substantial bodily harm.” While “bodily harm” is defined as “physical pain or injury, illness, or any impairment of physical condition,” the term “substantial bodily harm” encompasses a greater degree of physical injury and is defined as “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” *Compare* Minn. Stat. § 609.02(7) *with* Minn. Stat. § 609.02(7a).

The Petitioner, however, maintains that aggravated robbery is nevertheless a felonious assault because it is punishable as a felony and occurs when the perpetrator commits an assault by “inflict[ing] bodily harm upon another” during the commission of the robbery. Under Minnesota case law, aggravated robbery requires actual infliction of bodily harm as a required element of the offense. *State v. Burrell*, 506 N.W.2d 34, 37 (Minn. Ct. App. 1993). Intentional infliction of bodily harm constitutes a misdemeanor assault under MS section 609.224(1)(2). Nevertheless, the commission of a misdemeanor assault during the robbery and the classification of the aggravated robbery as a felony is not sufficient to conclude that a felonious assault occurred and was detected or investigated. As stated, the record does not show that the certifying agency detected conduct establishing the required elements for felony assault under MS sections 609.222 and 609.223(1), and the Petitioner has not identified any Minnesota statutes under which the certifying agency may have detected criminal conduct that constituted the offense of felonious assault.

Here, the police report and the Supplement B in the record indicate that the perpetrators hit the Petitioner in the face during the commission of the robbery. In his written statement, the Petitioner also indicated that the perpetrators kicked him when he was on the ground. He did not indicate whether he required or sought medical attention for any bruises or injuries he sustained. The underlying facts of the criminal activity as described in the police report, the Supplement B, and the Petitioner’s statement show that the perpetrators assaulted him and caused him bodily harm in the form of physical pain or injury during the commission of the robbery. *See* Minn. Stat. § 609.02(7). Further, the evidence

does not show that the Petitioner was the victim of substantial bodily harm, the assault was committed with a dangerous weapon, or both, which are required elements to establish either second- and third-degree felony assault under MS sections 609.222 and 609.223(1). The preponderance of the evidence therefore shows that the Petitioner was the victim of a misdemeanor assault, simple robbery, and aggravated robbery under Minnesota law.

Accordingly, the record as a whole does not show that the law enforcement detected felonious assault, and the offenses of simple robbery, aggravated robbery and misdemeanor assault that were detected are not amongst the qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act.

B. 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.

III. CONCLUSION

The Petitioner did not submit new evidence on motion. Therefore, he has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not shown that our decision was based on an incorrect application of law or policy and accordingly has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.