



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

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

In Re: 22492338

Date: AUG. 24, 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she was the victim of a qualifying crime. We dismissed the Petitioner’s subsequent appeal, and the matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

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.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). 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. Facts and Relevant History

In May 2016, the Petitioner filed the instant U petition. In support of her claim, the Petitioner submitted a Form I-918, Supplement B, U Nonimmigrant Status Certification (Supplement B), as well as her personal statement and an investigative report from the police department. The original Supplement B checked a box to indicate that the Petitioner was a victim of criminal activity involving or similar to the qualifying crime of felonious assault but did not list any statutory citations for the specific offenses investigated or prosecuted as perpetrated against the Petitioner, as requested in Part 3.3 of the form, or otherwise contain any further information regarding the incident. The Supplement B submitted by the Petitioner in response to the Director’s request for evidence (RFE) again did not identify or indicate a specific crime as being perpetrated against the Petitioner, nor did it identify the certifying official by name despite being signed with an original signature. After reviewing the evidence in the record, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity.

Our prior decision, incorporated here by reference, determined that, while the record indicated that she was assaulted during the course of a robbery, the Petitioner did not demonstrate that law enforcement detected, investigated, or prosecuted a felonious assault or any other qualifying crime as perpetrated against the Petitioner. We determined that it was undisputed that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, a robbery and that, during the course of the robbery, she suffered an assault. We further acknowledged that robbery under California law is punished as a felony. *See* California Penal Code (Cal. Penal Code) § 211 (defining robbery as the “felonious taking of personal property in the possession of another . . . accomplished by means of force or fear) (West 2022). However, the Petitioner’s arguments on appeal did not establish that law enforcement detected, investigated, or prosecuted, and she was the victim of, the qualifying crime of felonious assault. Instead, we noted that 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, distinct from the commission of a misdemeanor assault during the course of a separate felony. *See* section 101(a)(15)(U)(iii) of the

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.

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).

Additionally, we acknowledged that the certifying official checked a box on the initial and updated Supplements B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault. However, the Supplements B, when read as a whole and in conjunction with other evidence in the record, did not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault 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”). Neither Supplement B cited to or referenced any felony-level assault provision under California law as detected, investigated, or prosecuted as perpetrated against the Petitioner; indeed, the Supplements B left the portion of the form requesting the specific statutory citation for the offense investigated or prosecuted blank. The remaining law enforcement documentation in the record, namely the investigative report, likewise made no reference to any felony-level assault provision under California law.

Further, we noted that the Petitioner was correct to the extent that she pointed out that, in order to be punished as a felony under California law, that actual infliction of serious bodily injury is not required and a perpetrator may commit an assault while only using force likely to produce the same. Cal. Penal Code § 245(a)(4) (West 2022). However, this did not alter our analysis, as evidence describing what may appear to the Petitioner 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 the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime 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 . . .”). As stated above, there is not sufficient evidence in the record to establish that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault, or any other qualifying crime, as perpetrated against the Petitioner.

B. Motion to Reopen

In support of her motion to reopen, the Petitioner submits a third Supplement B, and copies of evidence already submitted and included in the record, such as her personal statements and the investigative report. In reviewing the new Supplement B, certified by a detective in the [redacted] Police Department, the certifying official again checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to felonious assault. This third Supplement B includes a citation in Part 3.3; however, it is noted as “211 PC Street Battery,” again indicating that the criminal activity detected, investigated, or prosecuted against the Petitioner was robbery, and does not include a citation to any statute indicating that a felonious assault was detected investigated or prosecuted.

As stated, a motion to reopen must be based on new facts which are supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). We interpret “new facts” to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. In our review of the new evidence submitted, we determine that the Petitioner

has not submitted new facts which would overcome our previous decision that she failed to establish, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted any qualifying criminal activity perpetrated against her. The updated Supplement B again does not contain any pertinent citation or statement to indicate that felonious assault was detected, investigated, or prosecuted, and the remaining evidence submitted has already been reviewed and considered under the previous decisions in the record.

C. Motion to Reconsider

In support of her motion to reconsider, the Petitioner submits a legal brief. In her brief, the Petitioner appears to confuse our prior statements that the qualifying crime of felonious assault was not investigated and infers that our prior decision was in error for saying there was no investigation of the crimes perpetrated against the Petitioner at all, stating, “[t]his police report had the crime as ROBBERY and the report itself shows that there is the beginning of an investigation. Furthermore, this report has a “INVESTIGATION” section where the police is [*sic*] investigating a crime by speaking to the [Petitioner] of the incident that occurred.” However, our prior decision did not claim that no investigation took place, rather, that the investigation and evidence in the record indicated that the only crime that was investigated was robbery, that robbery under Cal. Penal Code 211 was not a qualifying criminal activity, and that the evidence in the record did not reflect that felonious assault was detected, investigated, or prosecuted as perpetrated against the Petitioner.

Outside of the above argument, the Petitioner continues to insist that our prior analysis was incorrect and that robbery under Cal. Penal Code 211 should be considered qualifying criminal activity. The Petitioner once again raises the argument that “felonious assault in California is defined as an assault with a deadly weapon or force likely to produce great bodily injury, assault with caustic chemicals or flammable substances, or assault against a specific class of persons,” and argues that our prior decision stated that as there was no serious bodily injury, she was not the victim of a felonious assault; however, our prior decision acknowledged that bodily injury was not required for an aggravated assault to be charged. We acknowledged this argument and concluded that evidence describing what may appear to the Petitioner 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 the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime 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 does not cite a specific error in law or policy in our previous decision, nor does she cite pertinent precedent or adopted decisions that establish our prior decision was in error in support of her motion to reconsider. Therefore, the Petitioner has not established that our prior decision was based on an incorrect application of law or USCIS policy.

III. CONCLUSION

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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.