



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

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

In Re: 23316684

Date: JUL. 29, 2022

Appeal of Nebraska 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 Nebraska 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. The matter is now before us on appeal. On appeal, the Petitioner submits a brief asserting that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office 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; 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). 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 September 2016 with a Supplement B signed and certified by the Prosecuting Attorney from the [redacted] Prosecutor's Office in [redacted] Arkansas (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Related Crimes." The certifying official listed section 5-38-203 (Criminal Mischief in the First Degree) of the Arkansas Code Annotated (Ark. Code. Ann) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted and any known injury to the Petitioner, the certifying official indicated that, ". . . [redacted] responded to four or five gunshot fired in the area. Upon arrival, officers located five shell casings in front of Apartment #11C and shell casings found in "[the Petitioner's] [N]issan vehicle." When asked to describe any known or documented injury to the Petitioner, the certifying official referred to attached police reports, affidavits and expert opinions. The offense report from the [redacted] Police Department accompanying the Supplement B indicates that a police officer responded to a report of gunshots and discovered a silver [redacted] damaged by several bullets. The narrative portion of the offense report provides further detail about the incident including that the Petitioner had recently purchased the vehicle, did not know why someone shot at his vehicle or who could have done so. The Petitioner submitted a personal statement that confirms the information in the offense report.

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. In response, the Petitioner provided statements from himself and a witness, a copy of relevant Arkansas criminal statutes, a copy of the offense report from the [redacted] Police Department, and a letter from his pastor. 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 contends that he is eligible for U nonimmigrant status because criminal mischief under section 5-38-203 of the Ark. Code Ann. is substantially similar to the qualifying crime of felonious assault. The record does not support the Petitioner's contentions.

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. The Petitioner Is Not the Victim of Qualifying Criminal Activity

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”).”

As stated above, on the Supplement B filed with the Petitioner’s U petition, the certifying official listed the specific statutory citation investigated or prosecuted as section 5-38-203 of the Arkansas Code (Criminal Mischief in the First Degree), which provides:
§ 5-38-203. Criminal Mischief in the First Degree

- (a) A person commits the offense of criminal mischief in the first degree if he or she purposely and without legal justification destroys or causes damage to any:
 - (1) Property of another; or
 - (2) Property, whether his or her own or property of another, for the purpose of collecting any insurance for the property.
- (b) Criminal mischief in the first degree is a:
 - (1) Class A misdemeanor if the amount of actual damage is one thousand dollars (\$1,000) or less;
 - (2) Class D felony if the amount of actual damage is more than one thousand dollars (\$1,000) but five thousand dollars (\$5,000) or less;
 - (3) Class C felony if the amount of actual damage is more than five thousand dollars (\$5,000) but less than twenty-five thousand dollars (\$25,000); or
 - (4) Class B felony if the amount of actual damage is twenty-five thousand dollars (\$25,000) or more.

Ark. Code Ann. § 5-38-203 (West 2016)

Under Arkansas law, assault is defined as an intentional act that causes the victim to fear, or places the victim at risk of, imminent physical harm. *See* Ark. Code Ann. §§ 5-13-205, 5-13-206, 5-13-207 (defining assault in the first, second and third degrees) (West 2016). Aggravated assault is defined at Ark. Code Ann. § 5-13-204,² and involves “conduct that creates a substantial danger of death or

² Ark. Code Ann. § 5-13-204 provides:

serious physical injury to another person,” the use of a firearm, or “impedes or prevents the respiration of another person or the circulation of another person's blood.”

Arkansas's criminal mischief and assault statutes are not substantially similar because criminal mischief involves acts against property, whereas assault involves acts against a person, with aggravated assault involving one of the aforementioned aggravating factors. Accordingly, the Petitioner has not established that the nature and elements of the certified crime of criminal mischief are substantially similar to the qualifying criminal activity of aggravated assault under Arkansas law.

The Petitioner also asserts that he was the victim of the qualifying crime of aggravated assault under section 5-28-203 of the Ark. Code Ann. based on the factual circumstances of the criminal activity. Specifically, he argues that the perpetrators displayed a firearm in such a manner that created a substantial danger of death or serious physical injury to another person, consistent with an aggravated assault under section 5-38-203(2) of the Ark. Code Ann., based on the Supplement B form, offense report, and his mental health records. He maintains that “had the perpetrators not been minors . . . they would have *likely* been charged with more serious crimes as indicated in the Supplement B certification.” (emphasis added). We note however, that 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).

Based on the foregoing, the Petitioner has not established, by a preponderance of the evidence, that he was the victim of the qualifying crime of aggravated assault as perpetrated against him. Instead, as noted by the Director, the preponderance of the evidence indicates that the Petitioner was the victim of, criminal mischief, which is not a qualifying crime. Accordingly, the Petitioner has not demonstrated that he was a victim of a qualifying crime under section 101(a)(15)(U)(iii) of the Act.

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.

(a) A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely:

- (1) Engages in conduct that creates a substantial danger of death or serious physical injury to another person;
- (2) Displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person; or
- (3) Impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person.

(b) Aggravated assault is a Class D felony.

Ark. Code Ann. § 5-13-204 (West 2016)

ORDER: The appeal is dismissed.