



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

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

In Re: 6546789

Date: JULY 30, 2020

Appeal of Vermont 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 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). The Director concluded that the U petition was not approvable because the record did not establish that the Petitioner was the victim of qualifying criminal activity, and therefore also did not meet the other eligibility requirements. On appeal, the Petitioner asserts his eligibility for U nonimmigrant status. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish 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.

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 26 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 the 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 and the 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 &N Dec. 369, 375 AAO 2010). As a part of meeting this burden, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner’s helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act;

8 C.F.R. § 214.14(c)(2)(i). The petitioner 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 a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(i)-(iii). Although a petitioner may submit any relevant, credible evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B.

II. ANALYSIS

A. The Petitioner Was Not the Victim of Qualifying Criminal Activity

The Petitioner, a native and citizen of Mexico, filed his U petition in March 2015. The Director denied the Petition, concluding that the Petitioner did not meet his burden of establishing that he was the victim of qualifying criminal activity. On appeal, the Petitioner asserts that he was the victim of menacing, which he argues is similar to the qualifying criminal activity of stalking. However, the record does not support his claim.

The Act requires that petitioners “ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful” to law enforcement authorities “investigating or prosecuting [qualifying] criminal activity,” as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The requisite law enforcement certification must state, in pertinent part, that the petitioner “has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting.” 8 C.F.R. § 214.14(c)(2)(i). “Investigation or prosecution” of qualifying criminal activity “refers to 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).

On the Supplement B the Petitioner filed with his U petition, the Assistant Prosecutor in Ohio (certifying official) indicated that in 2013 the Petitioner was the victim of qualifying criminal activity involving or similar to “Other: Burglary.” At Part 3.3 of the Supplement B, the certifying official listed the statutory citations for the criminal activity being investigated or prosecuted as sections 2911.12(A)(2) and (3) of the Ohio Revised Code Annotated (Oh. Rev. Code Ann.), which correspond to burglary, meaning trespass in an occupied structure with the purpose to commit a criminal offense therein. The Petitioner does not argue that the certified crime of burglary is similar to any qualifying criminal activity at section 101(a)(15)(U)(iii) of Act, but instead contends that the facts of his case show that he was also the victim of menacing, which he states is similar to the qualifying criminal activity of stalking.

However, the certifying official did not indicate on the Supplement B that the Petitioner was the victim of menacing, and the evidence does not otherwise indicate that the crime of menacing was detected, investigated, or prosecuted. 8 C.F.R. § 214.14(c)(2)(i). The police report relating to the incident listed on the Supplement B listed the offenses identified as “burglary – trespass in occupied structure” under Oh. Rev. Code Ann. section 2911.12(A)(1) and theft under 2911.12(A)(2) Oh. Rev. Code Ann. section 2913.02. The Petitioner also provided a copy of an indictment and conviction records for one of the suspects showing that she was indicted for second degree burglary under Oh. Rev. Code Ann. section 2911.12(A)(2) and convicted of the lesser offense of third degree burglary. Although a police report

regarding a prior incident in 2010 stated that the Petitioner suspected the perpetrator was a person who “dislikes ‘illegal[s]’” and had threatened him in the past, that police report similarly indicated that the identified crime was burglary.

The Petitioner argues that we should “not view the qualifying crime narrowly, or simply be looking to see what crime was charged,” but that we should “consider the facts surrounding the criminal conduct and view those facts broadly.” He asserts that the facts of his case demonstrate that he was the victim of menacing because, prior to the burglary that was certified on the Supplement B, he was also the victim of two prior burglaries that he believes were perpetrated by a group of people that had been subjecting him to racially-motivated harassment and vandalism for years. The Petitioner correctly notes that the list of qualifying criminal activities at section 101(a)(15)(U)(iii) of Act is a list of general categories of criminal activity rather than specific statutory violations. Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007). However, the Petitioner has not shown that the certifying agency investigated or prosecuted any of the applicable categories of qualifying criminal activity as having been committed against him. The Supplement B must indicate that a petitioner “has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting.” 8 C.F.R. § 214.14(c)(2)(i). In this case, the Supplement B and additional documentary evidence in the record indicate that law enforcement officials investigated and prosecuted the crimes of burglary and theft, not menacing.

The Petitioner further argues that it would be contrary to congressional intent to conclude that he was not the victim of a qualifying crime because the Victims of Trafficking and Violence Prevention Act of 2000, Pub.L. No 106-386, was enacted to protect people like him who report crimes despite being vulnerable and lacking knowledge of the criminal justice system. However, although the Petitioner was helpful to law enforcement in the investigation of the burglary of which he was a victim, he has the burden to establish that he was the victim of either a crime “involving one or more of” the 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). He does not argue that the certified crime of burglary is similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of Act, but instead that he was also the victim of another crime which the certifying official did not detect, investigate, or prosecute. 8 C.F.R. § 214.14(c)(2)(i). Accordingly, the Petitioner has not established that he was the victim of qualifying criminal activity, as section 101(a)(15)(U)(i) of the Act requires.

B. The Remaining Eligibility Criteria for U-1 Nonimmigrant Classification

U-1 nonimmigrant classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that a petitioner was the victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I)-(IV) of the Act. As the Petitioner has not established that he was a victim of qualifying criminal activity, he has not met that requirement as well as the other eligibility criteria at section 101(a)(15)(U)(i)(II)-(IV) of the Act.

ORDER: The appeal is dismissed.