



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

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

In Re: 8848143

Date: JULY 24, 2020

Motion on Administrative Appeals Office 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition). We dismissed the Petitioner’s appeal.

This matter is now before us on a motion to reopen and reconsider. The Applicant submits additional evidence and a brief asserting that he has demonstrated his eligibility for U-1 nonimmigrant classification. Upon review, we will dismiss the motion to reopen and motion to reconsider.

**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 establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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).

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. Section 291 of the Act, 8 U.S.C. § 1361; 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. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Relevant Evidence and Procedural History

The Director determined that the Petitioner had not demonstrated he was a victim of qualifying criminal activity for U purposes, finding that robbery in North Carolina is not substantially similar to kidnapping or felonious assault. We summarily dismissed the Petitioner's subsequent appeal, finding that it did not specifically identify any erroneous conclusion of law or statement of fact in the Director's denial decision, as required under 8 C.F.R. § 103.3(a)(1)(v).

On instant motion to reopen and reconsider, the Petitioner submits United States Postal Service tracking information evidencing that he submitted an appeal brief identifying the basis of his appeal to the Nebraska Service Center. And, the record reflects that the Petitioner's appeal brief was delivered to the Nebraska Service Center 17 days after his appeal filing, and prior to issuance of our summary dismissal. The Petitioner has overcome the basis of our summary dismissal. However, we will deny the Petitioner's motions, as we do not find the Petitioner has established that he is a victim of qualifying criminal activity for U purposes.

### A. Qualifying Criminal Activity Was Not Detected, Investigated, or Prosecuted

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. *See* sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act (requiring that petitioners have 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); 8 C.F.R. §§ 214.14(a)(5) (defining "investigation or prosecution" of qualifying criminal activity as "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") and 214.24(c)(2)(i) (providing that 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")

The Petitioner's Supplement B indicates at Part 3 that the Petitioner is a victim of criminal activity involving or similar to violations of robbery, and for the statutory citation of the criminal activity

investigated or prosecuted lists “NCGS 14-87,” which related to North Carolina General Statute’s section for robbery with firearms or other dangerous weapons. The Petitioner’s incident report from the [ ] Police Department indicates that the offenses detected as committed against him include robbery from person and simple assault. Further, the Petitioner does not assert that any qualifying criminal activity committed against him was detected, investigated, or prosecuted but rather that the crime committed against him, robbery, is substantially similar to a qualifying crime, specifically kidnapping and felonious assault. Accordingly, the record does not establish that the certifying agency detected, investigated, or prosecuted qualifying criminal activity as perpetrated against the Petitioner.

**B. Robbery with a Firearm or Deadly Weapon is Not Substantially Similar to Felonious Assault or Kidnapping**

The Act lists general types of criminal activity and includes offenses “involving” one or more of the qualifying crimes. Section 101(a)(15)(U)(iii) of the Act; *see also* 72 Fed. Reg. at 53018 (reiterating that section 101(a)(15)(U)(iii) of the Act “is not a list of specific statutory citations, but instead a list of general categories of criminal activity”). The Act also provides that “any similar activity” to the qualifying crimes may also be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act.

The Petitioner argues that the definition of “any similar activity” is satisfied by individuals who have been victims of serious and felonious criminal offenses and have suffered substantial injury. The Petitioner contends that such an interpretation satisfies the congressional purpose behind enacting U visa legislation. However, the regulations explicitly define the term “any similar activity” as “offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of qualifying criminal activities.” 8 C.F.R. § 214.14(a)(9). Accordingly, qualifying criminal activity is that equivalent to, “involving,” or substantially similar in its nature and elements to, a qualifying crime enumerated in the Act. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9); *see also* 72 Fed. Reg. at 53018 (stating that the definition of “any similar activity” was needed because, and “base[d] . . . on[,] the fact that the statutory list of criminal activity is not composed of specific statutory citations”).

At the time of the offense committed against the Petitioner, section 14-87(a) of the North Carolina General Statutes (NCGS) provided that:

Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. Ann. § 14-87(a) (West 2014).

Because the offense of robbery with firearm or other dangerous weapons is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, the Petitioner must establish that the offense

otherwise involves a qualifying crime, or that the nature and elements of the offense are substantially similar to a qualifying crime.

### 1. Felonious Assault

The crime of assault in North Carolina is governed by common law rules; there is no statutory definition of assault. However, the North Carolina Supreme Court has defined “the common law offense of assault as ‘an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.’” *State v. Roberts*, 155 S.E.2d 303, 305 (N.C. 1967). And, the NCGS provides for different punishments for various types of assault offenses. The specific elements that elevate a simple assault to a felony include aggravating factors such as castration; maiming; the use of corrosive acid or alkali; the use of a deadly weapon either with the intent to kill or resulting in serious injury; assaults that inflict serious bodily injury; assaults against a particular class of person; discharging certain barreled weapons or firearm; or adulterated or misbranded food, drugs, or cosmetics. N.C. Gen. Stat. Ann. §§ 14-28 – 14-32.4, 14-34.1 – 14-34.2, 14-34.4 – 14-34.7, 14-34.9 – 14-34.10.

Comparison of North Carolina robbery with firearm or dangerous weapon and felonious assault definitions demonstrate that these crimes are not substantially similar in their nature and elements. The offense of robbery unlike assault is, in part, a property crime requiring the taking of money or goods. And, although robbery with firearm or dangerous weapon does include the use of a deadly weapon, just as North Carolina’s felonious assault statute at section 14-32 of the NCGS, it does not include the additional factor required for felonious assault, a resulting serious injury or an intent to kill. Accordingly, the Petitioner has not established that robbery is substantially similar to felonious assault under North Carolina statute.

The Petitioner also contends that felonious assault under section 211.1(2) of the Model Penal Code is substantially similar to North Carolina’s robbery with firearm or dangerous weapon. The Model Penal Code provides at section 211.1(2) that a person is guilty of aggravated assault if he:

- (a) Attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
- (b) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

Section 211.1(2) of the Model Penal Code further provides that aggravated assault under paragraph (a) is a felony of the second degree and aggravates assault under paragraph (b) is a felony of the third degree.

We do not find that the nature and elements of aggravated assault under the Model Penal Code and robbery with firearm or dangerous weapon in North Carolina are substantially similar. As stated above, the offense of robbery unlike assault is, in part, a property crime requiring the taking or attempted taking of personal property. Similarly, as robbery with firearm or dangerous weapon

requires this attempted taking or taking of property, this constitutes an additional element that must be satisfied for a violation of section 14-87(a) of NCGS, but is not required for a violation of aggravated assault under the Model Penal Code. In addition, North Carolina's robbery with firearm or dangerous weapon does not require an attempt to cause or causation of bodily injury with that weapon as required under section 211.1(2)(b) of the Model Penal Code, or an attempt to cause or causation of serious bodily injury as required under section 211.1(2)(a) of the Model Penal Code.

## 2. Kidnapping

At the time of the criminal activity against the Petitioner, North Carolina law section 14-39(a)(2) provided that:

Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of: Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or

We acknowledge that North Carolina case law recognizes that robbery with a firearm or dangerous weapon "cannot be committed without some restraint of the victim." *State v. Fulcher*, 294 N.C. 503, 523 (1978). The Petitioner argues that since it could be a violation of the constitutional prohibition against double jeopardy if a criminal defendant were charged with both kidnapping and robbery under *Fulcher*, two statutes are necessarily substantially similar. However, *Fulcher* does not equate the level of restraint inherent in robbery with a firearm with that required to violate the kidnapping statute. *Id.* Rather, the Supreme Court of North Carolina specifically construes "restrain" under the kidnapping statute to connote a restraint that is "separate and apart from that which is inherent in the commission of the other felony."

Contrary to the assertions of the Petitioner, commonalities between an offense and a statutorily enumerated qualifying crime is not sufficient to establish that the offense is "substantially similar" to a "qualifying crime or qualifying criminal activity" as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9). The elements and nature of kidnapping are notably distinct from those of robbery with a firearm or dangerous weapon under section 14-87(a) of NCGS. Robbery with a firearm involves the possession, use, or threatened use of a dangerous weapon to take or attempt to take the personal property of another; and, kidnapping requires unlawful constraint, restraint, or removal of an individual from one place to another for the purpose of a list of enumerated activities. Kidnapping does not require the element of any taking or attempt to take property from another, and as stated above, robbery is, in part a property crime and kidnapping requires a restraint that goes beyond the level of restraint required in robbery in North Carolina.

As the Petitioner has not established that robbery with firearm or dangerous weapon is substantially similar to felonious assault, kidnapping, or any other qualifying crime for U purposes, he has not demonstrated that he was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Since the identified basis for denial is dispositive of the Petitioner's motion, we decline to reach and hereby reserve the Petitioner's arguments regarding whether he suffered substantial physical or mental abuse. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not demonstrated that he was a victim of qualifying criminal activity or criminal activity substantially similar to a qualifying crime. Accordingly, the Petitioner has not established his eligibility for U nonimmigrant classification.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.