



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

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

MATTER OF X-Y-A-A-

DATE: AUG. 14, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks “U-1” nonimmigrant classification under Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 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 record did not establish that the Petitioner was the victim of qualifying criminal activity. On appeal, the Petitioner submits a brief and asserts that she submitted sufficient evidence to show that she was the victim of qualifying criminal activity. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

The U-1 classification affords nonimmigrant status to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. Section 101(a)(15)(U)(i) of the Act. To be eligible for U-1 nonimmigrant status, a petitioner must possess information about the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of the crime. *Id.*

Qualifying criminal activity must involve one or more of the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act, or involve “any similar activity” in violation of federal, state, or local criminal law. The term “any similar activity” means criminal offenses in which the nature and elements of the offenses are substantially similar to the statutory list of criminal activities. 8 C.F.R. § 214.14(a)(9).

A petitioner must file a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official, certifying the petitioner’s helpfulness in the investigation or prosecution of qualifying criminal activity.<sup>1</sup> Section 214(p)(1) of the Act; 8 C.F.R. § 214.14 (c)(2)(i). A 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 I&N Dec. 369, 375 (AAO 2010). Although a petitioner may submit any other evidence for us to consider with the

---

<sup>1</sup> The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted.

Supplement B, we determine, in our sole discretion, the credibility of and the weight to give all of the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Criminal Activity of Which the Petitioner Was a Victim

In [REDACTED] 2013, the Petitioner was in a store when a man snatched her gold necklace from her neck. The Petitioner filed her U petition based on the incident. The Director denied the U petition, concluding that the Petitioner was not the victim of qualifying criminal activity or of a substantially similar crime, and accordingly did not meet the remaining statutory criteria for U nonimmigrant classification. On appeal, the Petitioner asserts that one of the crimes of which she was a victim, robbery,<sup>2</sup> is substantially similar to felonious assault, which is a qualifying crime.

Upon review of the record, including materials submitted on appeal, the Petitioner has not established that the certifying agency detected,<sup>3</sup> investigated, or prosecuted a qualifying crime as having been committed against her. She also has not established that the robbery offense of which she was a victim is substantially similar to felonious assault.

With her U petition, the Petitioner submitted a Supplement B signed by a lieutenant of the [REDACTED] California Police Department (certifying official) in 2014, identifying the Petitioner as a victim of criminal activity involving or similar to felonious assault and robbery. The Supplement B listed the statutory citations of the criminal activity that was investigated or prosecuted as California Penal Code section 211, which corresponds to robbery, and section 487(c), which corresponds to grand theft. The certifying official indicated at part 3.5 of the Supplement B that the Petitioner was the victim of a robbery during which the perpetrator scratched her on the chest.

The related police incident report stated that a man “grabbed [the Petitioner’s] necklace and snatched it away from her neck.” According to the incident report, the Petitioner “said she was not injured as a result of this incident and refused medical attention. [The officer] observed that [the Petitioner] ha[d] redness on her chest area below the neck.” The incident report referenced only section 487(c) of the California Penal Code, grand theft, as the related offense. The police records do not reference the investigation of an assault or refer to the assault provisions contained in the California Penal Code. The evidence of record thus indicates the detection or investigation of robbery and grand theft as the only crimes committed against the Petitioner.

---

<sup>2</sup> The Supplement B also indicates that the Petitioner was the victim of grand theft. However, the Director concluded that grand theft is not a qualifying crime or substantially similar to a qualifying crime, the record supports that finding, and the Petitioner does not dispute the finding on appeal. Instead, she argues only that robbery is substantially similar to a qualifying crime.

<sup>3</sup> The term “investigation or prosecution,” as used in section 101(a)(15)(U)(i) of the Act, also includes the “detection” of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

On appeal, the Petitioner alleges that Congress intended section 101(a)(15)(U) of the Act to be interpreted broadly in order to provide protection for immigrant victims of crime. In particular, she asserts that U.S. Citizenship and Immigration Services (USCIS) must interpret the phrase “qualifying criminal activity” broadly and cannot interpret “substantially similar” to mean that a petitioner must be the victim of a crime that is identical to a listed qualifying crime. The list of qualifying criminal activities at part 3.1 of the Supplement B includes general categories of qualifying criminal activity, and we do not require that a victim of substantially similar activity show that he or she is the victim a crime identical to one on the list. *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). The statute allows for a broad interpretation of the qualifying crimes, as “qualifying crimes” expansively includes “similar activity” to the listed crimes, upon violation of federal, state, or local criminal law. According to the regulation, the term “any similar activity” means criminal offenses in which the nature and elements of the offenses are substantially similar to the statutory list of criminal activities. 8 C.F.R. § 214.14(a)(9).

The Petitioner also asserts that it would be unfair for crime victims in California not to obtain U nonimmigrant status while victims of the same crime in other states could.<sup>4</sup> While we recognize that the application of state law may result in disparate outcomes for similar offenses across different jurisdictions, such variances are inherent in the structure of the U statute and regulations. We are bound to follow the requirements of the statute in the Act, as implemented by the regulations, in determining U visa eligibility. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

Furthermore, the Petitioner contends that we should defer to the certifying official’s indication at part 3.1 of the Supplement B that the Petitioner was the victim of felonious assault, and should treat the completed Supplement B as probative evidence. The certifying official’s completion of part 3.1 of the Supplement B is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Rather, it is part 3.3 which establishes the crime or crimes that the certifying agency detected, investigated, or prosecuted that resulted in a petitioner’s victimization. The purpose of part 3.1 is only to identify the general category of criminal activity to which the offenses in part 3.3 may relate. *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. at 53018. While we consider the Supplement B probative evidence, we are permitted to look to other relevant and reliable information such as police reports and court documents, and determine, in our sole discretion, the credibility of and weight to give all of the evidence, including the Supplement B. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4); *see also* U Nonimmigrant Status Interim Rule, 72 Fed.

---

<sup>4</sup> The Petitioner makes a further general claim “USCIS has consistently approved” U petitions submitted with Supplements B that listed robbery under section 211 of the California Penal Code. However, the Petitioner does not provide citations to any precedent decisions in support of her claim. *See* 8 C.F.R. § 103.3(c) (stating precedent decisions “are binding on all Service employees in the administration of the Act.”). Non-precedent decisions are not binding on USCIS and we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 597 (Comm’r 1988); *see also Sussex Eng’g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Reg. 53014, 53024 (Sept. 17, 2007) (describing the evidence necessary to establish that a petitioner was a victim of qualifying activity).

In determining the criminal activity that was investigated, we do not speculate about what crimes could have been charged. Rather, in addition to the Supplement B, we look to supporting relevant and credible evidence including police reports, court documents, and affidavits of witnesses such as medical personnel to determine what crime was actually investigated. Here, the relevant evidence does not demonstrate that the certifying agency investigated as being perpetrated against the Petitioner any crime other than robbery and grand theft, which are not qualifying crimes under the Act. Although the certifying official indicated on the Supplement B that the Petitioner was the victim of criminal activity involving, or similar to, felonious assault and described the Petitioner as being robbed and scratched by an “assailant,” the Supplement B does not cite to the provisions in the California Penal Code that discuss felonious assaults.

**B. Robbery Under the California Penal Code Is Not a Qualifying Crime or Substantially Similar to Qualifying Criminal Activity**

Because robbery is not specifically listed as qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act, the Petitioner must establish that its nature and elements are substantially similar to a qualifying crime. 8 C.F.R. § 214.14(a)(9). This determination is not made based upon a review of the underlying facts regarding the criminal incident for which the Petitioner was a victim, but rather, entails comparing the nature and elements of the investigated crime with a statutorily enumerated crime.

At the time of the robbery, section 211 of the California Penal Code defined robbery as “the felonious taking of personal property in the possession of another from his person or immediate presence, and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211 (West 2013). The element of fear within robbery has been defined, in part, as “[t]he fear of an unlawful injury to the person or property of the person robbed . . . .” *Id.* at § 212. Although the degree of force involved in robbery is not defined in the California Penal Code, the California courts have described it as “immaterial” because it may be as little force as necessary to overcome the victim’s resistance to the taking of the property. *See People v. Lescallett*, 123 Cal. App. 3d 487, 491 (Cal. Ct. App. 1981) (quoting *People v. Clayton*, 89 Cal. App. 405, 411 (Cal. Dist. Ct. App. 1928), and noting that nonconsensual snatching of a purse is sufficient for robbery); *see also People v. Abilez*, 61 Cal. Rptr. 3d 526, 556 (Cal. Ct. App. 2007) (element of force may be satisfied even when the victim is unconscious or otherwise unaware of the robbery).

When the robbery occurred in 2013, the California Penal Code also defined simple assault, a misdemeanor, as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code §§ 240-241 (West 2013). California recognizes a distinction among misdemeanor and felony assault offenses based upon the presence of aggravating factors such as the use of a caustic chemical, deadly weapon or instrument, flammable substance, or a stun gun or less lethal weapon; force likely to produce great bodily injury; or an assault against a

specific class of persons (e.g., peace officers, fire fighters, custodial officers, or school employees). *Compare* Cal. Penal Code § 240 *with* §§ 244, 244.5, 245, 245.2-245.3, 245.5. While robbery contains as an element the taking of personal property by force *or* by causing fear of an unlawful injury, assault crimes in California require an attempt to commit a violent injury, which is an element that is not required for the commission of a robbery. Further, the elements of assault do not involve the “felonious taking” requisite to robbery.

The Petitioner claims that the California courts have determined that a robbery offense under section 211 of the California Penal Code “is the same in all elements as assault under [section 240]” and cites to *People v. Sutton*, 110 Cal. Rptr. 635, 639-40 (Cal. Ct. App. 1973) (citing *People v. Guerin*, 99 Cal. Rptr. 573, 578 (Cal. Ct. App. 1972)), to support her assertion.<sup>5</sup> The cases cited, however, do not make a generalized finding that any robbery necessarily encompasses all the elements of assault; rather, the courts in each case determined that all the elements of assault were charged and proven in furtherance of the robbery. Moreover, the California Supreme Court has concluded that assault with a deadly weapon is not a lesser included offense of robbery. *People v. Wolcott*, 665 P.2d 520, 524-27 (Cal. 1983). The California Supreme Court specifically held that a robbery offense could be committed without an attempt to inflict violent injury and without the present ability to do so, both of which are required elements of an assault under California law. *Id.* at 525. Additionally, robbery under section 211 does not involve any of the protected classes of people set forth in felony assault. *Compare* Cal. Penal Code § 211 *with* §§ 245(c)-(d), and 245.5. Finally, the force required for robbery is not “force likely to produce great bodily injury,” an essential element for an assault to be classified as a felony under California law.

We acknowledge the Petitioner’s argument that assault and robbery are similar as an assault can be charged either as a felony or a misdemeanor, and a robbery can be charged solely as a felony offense. However, this comparison relates only to the nature of the two crimes, while as discussed previously, the Petitioner must establish that the nature *and* elements of the robbery for which she was a victim were substantially similar to a felonious assault as required under the statutory and regulatory requirements. The significant differences in the elements of robbery and felonious assault show these crimes are not substantially similar. Accordingly, the Petitioner has not demonstrated that she is the victim of qualifying criminal activity or substantially similar activity, as section 101(a)(15)(U)(iii) of the Act requires.

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

---

<sup>5</sup> The Petitioner further cites to California cases for which the underlying offense only involved an assault.

### III. CONCLUSION

The Petitioner, a victim of robbery and grand theft, has not established that she was a victim of felonious assault or any other qualifying crime, nor has she established that the nature and elements of the crime committed against her are substantially similar to any qualifying crime. Accordingly, the Petitioner has not satisfied the eligibility criteria for U nonimmigrant status.

**ORDER:** The appeal is dismissed.

Cite as *Matter of X-Y-A-A-*, ID# 1445033 (AAO Aug. 14, 2018)