



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

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

MATTER OF L-R-A-R-

DATE: SEPT. 7, 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), as the victim of an incident where she was robbed of her necklace. The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and the matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

To qualify as a victim for U-1 classification, the offense must involve 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. 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 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). To meet 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.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The petitioner must also submit any additional evidence available to establish that she is a victim of qualifying criminal activity and has otherwise satisfied the remaining

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.

eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although a petitioner may submit any evidence for us to consider, we determine, in our sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

Through this appeal, the Petitioner alleges that she was the victim of the qualifying crime of felonious assault or, in the alternative, criminal activity substantially similar to the qualifying crime of felonious assault.

A. Criminal Activity of Which the Petitioner Was the Victim

The Supplement B submitted with the Petitioner's U petition indicated that, in May 2012, she was the victim of felonious assault; however, the certifying official did not cite to any assault provisions under the California Penal Code (Cal. Pen. Code) as the crime(s) investigated or prosecuted as perpetrated against the Petitioner. Instead, the certifying official listed only robbery under section 211 of the Cal. Pen. Code. The Supplement B explained that the Petitioner was "putting [her] baby in the car" when a man approached, "aim[ed] for [her] neck to steal [her] jewelry[,] and hit [her]." It further stated that the Petitioner was "scratched, bruised, and beaten on her face, neck, and body" as a result of incident.

With the Supplement B, the Petitioner submitted an incident report from the [REDACTED] California, Sheriff's Department. The incident report listed the investigated offense as "robbery" and the related statute as "211 PC." It provided that an officer responded to a "robbery report call," and that the Petitioner relayed the following narrative regarding the offense: she was returning to her vehicle and placing her child in the backseat when the perpetrator approached, stole her necklace, and "struck the left side of [her] face" with a closed fist. The officer indicated that he observed "swelling, bruising, and general scratches to the left side of [the Petitioner's] face" and "several scratches to the upper portion of [her] breast . . . [and her] right hand." He initiated a "robbery crime broadcast" as a result of the incident.

The Petitioner's personal statement submitted with her U petition, dated nearly two years after the incident, stated that the perpetrator approached and pushed her against her vehicle, and that she pushed him back. She explained that he "pulled [her] hair, pushed [her] several times, and after [she] screamed, he slapped [her]." The Petitioner additionally stated that he scratched her neck, pulled her necklace from her, and "simultaneously hit [her] mouth so that [she] would stop screaming." She further indicated her belief that her attacker was armed because "he kept placing his hand behind him as if he was going to get something." The interaction ended when the perpetrator "punched [the Applicant's] stomach and ran away."

The Director concluded that, based on this evidence, the Petitioner had not established she was the victim of a felonious assault; the record demonstrated she was the victim of only robbery under section 211 of the Cal. Pen. Code. The Director emphasized that "[t]he source of the factual

information . . . [wa]s the [incident] report,” that “nowhere in th[e] report [wa]s felonious assault cited or mentioned” as having been perpetrated against the Petitioner.

On appeal, the Petitioner submits a newly executed Supplement B and a crime analysis supplemental form which she asserts “provide more detail . . . about the crime committed against” her and “verify[y]” that she was in fact the victim of the qualifying crime of felonious assault.² The newly executed Supplement B again indicates that the Petitioner was the victim of felonious assault but cites to only robbery under section 211 of the Cal. Pen. Code as the statute investigated or prosecuted as perpetrated against her.³ It additionally provides an updated narrative of the circumstances surrounding the incident, stating that the Petitioner was “assaulted during a street robbery” when the perpetrator “held her against her will[,]” “placed his right hand over her mouth to prevent her from screaming as he punched her on the face[,]” “forcibly pulled her gold necklace off of her neck[,]” and ran away from the scene. The crime analysis supplemental form provides a physical description of the perpetrator and contains a checked box to indicate that “bodily force” was used in the commission of the offense; however, the form does not provide any additional insight into the nature of the “bodily force” used, nor does it indicate that a weapon was involved.

In determining the criminal activity of which U petitioners are victims, we do not speculate about what crimes might have been charged by law enforcement, but instead look to what the preponderance of the evidence shows were the crimes actually detected, investigated, or prosecuted by the certifying agency as having been committed against the Petitioner, and of which the Petitioner was in fact a victim. *See* sections 101(a)(15)(U)(i)(I), (III) and 214(p)(1) of the Act (requiring victimization from qualifying criminal activity and helpfulness to law enforcement investigating or prosecuting the qualifying criminal activity); *see also* 8 C.F.R. §§ 214.14(a)(5) (defining “investigation or prosecution” as “the detection or investigation of a qualifying crime or criminal activity, as well as . . . the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity”) and 214.14(b)(1)-(3) (reiterating the victimization and helpfulness requirements). The Supplement B is required evidence which informs, but does not solely determine, whether a U petitioner is a victim of qualifying criminal activity. *See* 8 C.F.R. §§ 214.14(c)(2)(i) (requiring that the filing of a U petition include a Supplement B certifying a petitioner’s helpfulness in the detection, investigation, or prosecution of qualifying criminal activity) and 214.14(c)(4) (providing that we determine, in our sole discretion, the credibility of and weight given to all the evidence, including the Supplement B).

Here, the record as a whole, including that submitted on appeal, does not indicate that the Petitioner was the victim of any crime beyond robbery under section 211 of the Cal. Pen. Code. While we

² We acknowledge that the Petitioner additionally submitted a series of undated photographs that appear to document her injuries as a result of the incident in question; however, they are photocopies of extremely poor quality and, accordingly, do not provide any additional insight into the nature or severity of her injuries.

³ The newly executed Supplement B additionally indicates that the Petitioner was the victim of unlawful criminal restraint. However, because the Petitioner does not assert that she was the victim of unlawful criminal restraint or otherwise address the issue on appeal, we do not consider it here.

acknowledge that the certifying official indicated on the original and newly executed Supplements B that the Petitioner was the victim of the qualifying crime of felonious assault, and further described in the updated Supplement B that the Petitioner was “assaulted during a street robbery,” both documents cited to only robbery under section 211 of the Cal. Pen. Code as the statute investigated or prosecuted as perpetrated against the Petitioner. Relatedly, the updated Supplement B was not accompanied by a statement from the certifying official or any other evidence explaining the reasoning behind, or need for, the updated narrative, and the crime analysis supplemental form’s checked box indicating that “bodily force” was used in the commission of the offense is not a sufficient basis upon which to conclude that a felonious assault was detected, investigated, or prosecuted. Finally, and as highlighted by the Director, the corresponding incident report—taken a matter of hours after the commission of the offense—did not reference the detection, investigation, or prosecution of felonious assault; instead, it described a “robbery,” listed the related statute as “211 PC,” and provided that the officer responded to a “robbery report call” and initiated a “robbery crime broadcast.”

The Petitioner argues that, “[a]lthough the [incident report] did not actually use the words felonious assault[,] . . . the facts and descriptions written by the responding officer indicate that a felonious assault was detected.” She emphasizes that the incident involved the aggravating factor of the perpetrator’s use of a “deadly weapon[,] . . . his fist.”

California law addresses the crime of assault in section 240 of the Cal. Pen. Code, defining it as “an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2012). However, in order for an assault to be classified as a felony in California, aggravating factors must be present. *See e.g.*, Cal. Penal Code § 245(a) (West 2012) (most relevantly punishing, as a felony, “[a]ny person who commits an assault upon the person of another with a deadly weapon . . . [or] by any means of force likely to produce great bodily injury”).

As a preliminary matter, regarding the Petitioner’s assertion of the perpetrator’s use of his fist as a deadly weapon, the phrase “deadly weapon” within the meaning of the Cal. Pen. Code contemplates “an object extrinsic to the human body.” *People v. Aguilar*, 945 P.2d 1204, 1210 (Cal. 1997) (“[W]e conclude a ‘deadly weapon’ within the meaning of section 245 must be an object extrinsic to the human body. Bare hands or feet, therefore, cannot be deadly weapons”). Moreover, the Supplements B, the incident report, and the Petitioner’s own personal statement in the record describe the perpetrator pushing the Petitioner, scratching her, and punching her on the left side of her face on one occasion in an effort to steal her necklace and flee the scene. While unquestionably unfortunate, these facts do not indicate an attempt to harm the Petitioner by means likely to produce great bodily injury such that it would be considered a felonious assault under California law. *See People v. Armstrong*, 8 Cal. App. 4th 1060, 1066 (Cal. App. 1992) (defining “great bodily injury” as “bodily injury which is significant or substantial, not insignificant, trivial or moderate”). Absent any additional authoritative evidence or facts suggestive of the above, the record does not establish that the Petitioner was a victim of felonious assault or any crime beyond robbery under section 211 of the Cal. Pen. Code.

B. Robbery Under the Cal. Pen. Code is Not 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. The inquiry is not fact-based, but rather entails comparing the nature and elements of the specific statutes in question. The Petitioner asserts that the robbery committed against her was substantially similar to the qualifying crime of felonious assault.

At the time of the offense against the Petitioner, the Cal. Pen. Code defined robbery as “the felonious taking of personal property in the possession of another, from [her] person or immediate presence, and against [her] will, accomplished by means of force or fear.” Cal. Pen. Code § 211 (West 2012). As stated above, California law defines assault as “an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another” and requires the presence of an aggravating factor—such as use of deadly weapon or force likely to produce great bodily injury—in order to elevate the offense to a felony. Cal. Penal Code §§ 240, 245.

Here, the Petitioner argues that, because it is accomplished by force or fear, robbery under section 211 of the Cal. Pen. Code is substantially similar to felonious assault. However, the elements of robbery under section 211 of the Cal. Penal Code are notably distinct from those of felony assault. The statute investigated in this case involves the taking of the personal property of another by force or fear, and does not specify the commission, or attempted commission, of violent injury to another person. Moreover, felony assault under the Cal. Penal Code requires the unlawful attempt to commit violent injury *and* the presence of an aggravating factor, an element not required under the robbery statute.

The Petitioner additionally argues that the qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act should be viewed as “broad categories of offenses rather than specific required offenses[,] because each state has their own way of labeling and defining criminal offenses.” She then compares robbery under section 29.02 of the Texas Penal Code (Tex. Pen. Code) with aggravated assault as defined in section 211.1(2) of the Model Penal Code (MPC), asserting that the two statutes are substantially similar in both their nature and their elements.

As a preliminary matter, a comparison of the Tex. Pen. Code and the MPC is not strictly relevant to the case at hand, as the incident in question took place in California and was investigated under the Cal. Pen. Code. Moreover, the statutes are distinct in both their natures and elements. Similar to that articulated above, section 29.02 of the Tex. Pen. Code requires only causing or threatening to cause bodily injury in the course of a theft, while section 211.1(2) of the MPC requires causing or threatening to cause *serious* bodily injury or bodily injury *with a deadly weapon*. See Tex. Pen. Code § 29.02 (West 2012) (stating that a person commits robbery if, “in the course of committing theft . . . , he . . . causes bodily injury to another; or . . . threatens or places another in fear of imminent bodily injury or death”); MPC § 211.1(2) (West 2012) (stating that a person is guilty of aggravated assault if he “attempts to cause serious bodily injury to another, or causes such injury . . . ; or . . . “attempts to cause or . . . causes bodily injury to another with a deadly weapon”). Akin to California’s felonious assault statute, the MPC aggravated assault statute requires the presence of an

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aggravating factor to elevate the severity of the offense from simple to aggravated assault, whereas the Texas robbery statute does not.

Accordingly, the Petitioner has not established that the criminal activity of which she was a victim, robbery under section 211 of the Cal. Pen. Code, is substantially similar to the qualifying crime of felonious assault.

C. The Remaining 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 the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated that, as required, she was a victim of qualifying criminal activity. The record shows that the only crime detected, investigated, or prosecuted as being perpetrated against the Petitioner was robbery, and robbery is not a qualifying crime or substantially similar to a qualifying crime. The Petitioner therefore cannot satisfy the eligibility criteria for U nonimmigrant status in subsections 101(a)(15)(U)(i)(I)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

ORDER: The appeal is dismissed.

Cite as *Matter of L-R-A-R-*, ID# 1629977 (AAO Sept. 7, 2018)