



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

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

In Re: 34942677

Date: NOV. 25, 2024

Appeal of Vermont 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 Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner was the victim of qualifying criminal activity. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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

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.*

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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and petitioners bear the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. at 375. As a part

of meeting this burden, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the qualifying criminal activity.<sup>1</sup> Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its 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

### A. Relevant Facts and Procedural History

The Petitioner filed her U petition in 2016 with a Supplement B signed and certified in 2016 (first supplement B) by the Chief, [REDACTED] Police Department, North Carolina (certifying official). At Part 3.1 of the Supplement B, which asks the certifying official to indicate the qualifying criminal activity of which the Petitioner was a victim, the certifying official checked a box showing the Petitioner was the victim of “Other: Assault on a Female.” When asked to provide the specific statutory citations investigated or prosecuted, the certifying official listed North Carolina General Statutes (N.C. Gen. Stat.) section 14-33(b)(2), criminalizing misdemeanor assault.<sup>2</sup> As for a description of the criminal activity and any injuries to the victim, the certifying official wrote “see attached report.” The police report in the record states that in 2015, the Petitioner was the victim of “Assault on Female” and reported that a coworker struck her in the nose with a plastic broom handle. The Petitioner was taken to the hospital and treated for “local swelling and bruising.” The record also contains a Daily In Custody Report listing charges relating to five defendants not clearly related to this case. Although the charge relating to one of the defendants is listed as “GS 14-33B4<sup>3</sup> / Assault On Female,” the name of the defendant does not match the name of the suspect in the police report or the Petitioner’s statement describing the incident,<sup>4</sup> so it is unclear whether the Daily In Custody Report relates to the same individual. Regardless, it does not provide additional information about the crime investigated or prosecuted beyond what is already in the Supplement B and the police report.

In her personal statement in support of her U petition, the Petitioner claimed in relevant part that while working as a cleaner at a school, she was attacked by her coworker, Mr. H-. She stated that Mr. H- had thrown a broom at her sister, the job supervisor, the day before, and then arrived at work drunk the following day. The Petitioner claimed that Mr. H- “began to yell and curse at [her] sister, so [she]

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<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, and gives the certifying agency the opportunity to describe the crime, the victim’s helpfulness, and the victim’s injuries.

<sup>2</sup> N.C. Gen. Stat. section 14-33 relates to “Misdemeanor assaults, batteries, and affrays, simple and aggravated . . . .” In the version that applied at the time of the assault against the Petitioner in 2015, subsection (c)(2) specifically referred to assault on a female. Subsection (b)(2) was repealed in 1995. N.C. Gen. Stat. § 14-33(b).

<sup>3</sup> Subsection (b)(4) of N.C. Gen. Stat. section 14-33 was repealed in 1991. N.C. Gen. Stat. § 14-33(b). The variation in citations to the applicable subsection makes it difficult for us to assess exactly which form of misdemeanor assault was investigated or prosecuted in this case, but all of the evidence appears to agree that it was a misdemeanor assault under N.C. Gen. Stat. section 14-33. The applicable subsection specifying the type of misdemeanor assault is not material to our analysis.

<sup>4</sup> The Petitioner’s statement and the police report both reflect that the suspect was named “Mr. H-“ (we use initials for privacy). The Daily In Custody Report entry about a charge of assault on a female lists a defendant with initials D-Z-. The other defendants on the list were charged with other apparently unrelated offenses.

stood between them and asked what was wrong,” and he then “started to swing at [her] with both hands with closed fists. He was able to hit [her] twice in the face,” once on the nose and then on the cheek. She went on to state that Mr. H- “then tried to tackle [her], so [she] grabbed a broom and tried to use it to block his attack. After the first punch [her] vision went dark.” The Petitioner indicated that Mr. H- tried to keep hitting her but another coworker intervened and the police soon arrived. She said her nose was bleeding badly and continued to bleed for over two weeks afterward. Also, she had swelling on her nose and cheek, her eye was bloodshot, and she had a bruise from her eye to her cheek. Doctors determined that her nose was not broken and prescribed anti-inflammatory medication and nose drops. She noted that her nose still bleeds sometimes but she has not been able to afford additional medical care. The Petitioner indicated that Mr. H- was fired but she has a lasting fear of other people, arguments, and loud voices.

As additional supporting evidence, the Petitioner submitted a statement from her sister indicating that Mr. H- was aggressive, angry, and using bad language, and that he “punched [the Petitioner] in the face making her bleed by the nose.” A hospital record shows the Petitioner received a CAT scan of the face and jaw.

In response to a request for evidence from the Director, the Petitioner submitted a new Supplement B signed and certified in 2024 (second Supplement B). At Part 3.1 of the second Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “False Imprisonment” and “Felonious Assault.” The certifying official listed the specific statutory citations investigated or prosecuted as “NC § 14-33b,” a reference to misdemeanor assault under N.C. Gen. Stat. section 14-33. In the section requesting a description of the criminal activity, the certifying official wrote that the Petitioner was attempting to diffuse an altercation between her sister and Mr. H- at work when he attacked her “and punched her directly on her nose and cheek causing her nose to bleed uncontrollably. Mr. [H-] continued to attack her while she attempted to get away. Another coworker intervened and was able to stop him.” The certifying official further indicated that the Petitioner “sustained substantial physical injuries and is emotionally traumatized as a result of the attack.” She also submitted copies of photographs.<sup>5</sup>

In denying the U petition, the Director noted that assault on a female is a misdemeanor under North Carolina law. The Director determined that the Petitioner had not shown that the nature and elements of the crime of which she was a victim are substantially similar to a qualifying crime. On appeal, the Petitioner argues that the facts of her case show she was the victim of felonious assault and false imprisonment.

#### B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

As stated above, the Act requires 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 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 refers to

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<sup>5</sup> Three of the photocopies of the photographs are of the Petitioner. Two appear to show injuries to her face. The other two photographs show scenes or objects that are difficult to identify, and a description does not appear in the record.

“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* (U Interim Rule), 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 . . .”).

In this case, the Petitioner has not met her burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. We acknowledge that the certifying official indicated on the second Supplement B that she was the victim of felonious assault and false imprisonment. However, the certifying official still only cited N.C. Gen. Stat. section 14-33(b), which relates to misdemeanor assault, consistent with the citation on the first Supplement B. The police report, which does not contain a citation, lists the “Crime Incident(s)” as “Assault on Female,” which is a form of misdemeanor assault under N.C. Gen. Stat. section 14-33. Beyond the checked boxes on the second Supplement B, the record does not otherwise indicate that the crimes of felonious assault and false imprisonment were perpetrated against the Petitioner. Even the Daily In Custody Report, which merits little to no weight because it does not list a defendant by the name of the suspect listed elsewhere in the record, lists “Assault On Female” in violation of N.C. Gen. Stat. section 14-33(b)(4).

The Supplements B in this case, when read as a whole and in conjunction with other evidence in the record, do not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crimes of felonious assault or false imprisonment as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating that the burden “shall be on the petitioner to demonstrate eligibility” and that “USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B”). The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Chawathe*, 25 I&N Dec. at 375. She has demonstrated that law enforcement detected, investigated, and prosecuted misdemeanor assault under N.C. Gen. Stat. section 14-33.

### C. Misdemeanor Assault Under North Carolina Law Is Not Substantially Similar to a Qualifying Crime

As stated, the record establishes that law enforcement detected and investigated misdemeanor assault, which is not one of the qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act. When a certified offense is not a qualifying criminal activity specifically listed under section 101(a)(15)(U)(iii) of the Act, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act (providing that 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”); 8 C.F.R. § 214.14(a)(9) (providing that 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). Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction’s statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense “involved,” or was “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).

On appeal, the Petitioner argues that the crime committed against her amounts to a felonious assault in violation of N.C. Gen. Stat. section 14-32(b), which requires an assault with the use of a deadly weapon and inflicting serious bodily injury. She asserts that Mr. H- struck her in the face with a plastic broom stick and that the police report indicated the broom stick was bent in half, demonstrating “the severity of the blow that [she] received.” She alleges that the broom stick “could be seen as a deadly weapon” and she suffered a serious injury, so the facts show she was the victim of felonious assault.

However, for an offense that was investigated or prosecuted to be considered a “similar activity” to a statutorily enumerated qualifying crime, the “nature and elements” of the offenses must be substantially similar. 8 C.F.R. § 214.14(a)(9). Contrary to the Petitioner’s argument, the proper inquiry is not fact-based, but rather entails comparing the nature and elements of the crime certified as detected, investigated, or prosecuted with the federal, state, or local jurisdiction’s statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act.

“Assault on a female” in North Carolina, the crime listed on the first Supplement B and the police report, is a form of misdemeanor assault committed by a male at least 18 years of age upon a female. *See* N.C. Gen. Stat. § 14-33 (West 2015). The North Carolina General Statutes do not define assault. However, assault is defined in North Carolina case law as “an overt act or attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or violence must be sufficient to put a person of reasonable firmness in fear of immediate physical injury.” *See United States v. Vinson*, 805 F.3d 120, 125 (4th Cir. 2015); *State v. Haynesworth*, 146 N.C.App. 523, 529, 553 S.E.2d 103, 108 (2001); *State v. Roberts*, 270 N.C. 655, 658, 155 S.E.2d 303, 305 (1967). Under the North Carolina General Statutes, felonious assault means an assault with the use of a deadly weapon where the perpetrator either inflicts serious bodily injury or has the intent to kill. N.C. Gen. Stat. § 14-32(a)-(f) (West 2015).

Assault on a female is not substantially similar to felonious assault because felonious assault involves the use of a deadly weapon with either the intent to kill or which inflicts serious injury, whereas misdemeanor assault does not require these aggravating factors. *Compare* N.C. Gen. Stat. § 14-32 with N.C. Gen. Stat. § 14-33. Assault on a female is listed among the types of assault deemed misdemeanors under section 14-33 of the North Carolina General Statutes. An analysis of the elements of misdemeanor assault compared with N.C. Gen. Stat. section 14-32 does not demonstrate that assault on a female is substantially similar to felonious assault.

As for false imprisonment, the Petitioner claims that the facts show she was the victim of this offense. She does not cite anything in support of her argument, but states generally that false imprisonment in North Carolina is “defined at the Common Law. One must show that the perpetrator unlawful[ly]

restrained the victim against their will.” She states that in this case, Mr. H- “restrained [her] by committing an assault against her” and she tried to get away but was unable to until a coworker intervened. Again, the appropriate inquiry here is not a comparison of the facts but requires a comparison between the nature and elements of the certified crime with the federal, state, or local jurisdiction’s statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. The Petitioner here does not cite to an applicable statutory equivalent or make a comparison of the nature and elements of the misdemeanor assault investigated in her case with any law defining false imprisonment.

#### D. 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 the criteria at section 101(a)(15)(U)(i) of the Act. We need not reach, and therefore reserve, the issues of whether the Petitioner is otherwise eligible for U nonimmigrant classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

### III. CONCLUSION

The Petitioner has not established that she was the victim of qualifying criminal activity. Therefore, she cannot establish eligibility for U nonimmigrant classification.

**ORDER:** The appeal is dismissed.