

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[REDACTED]  
C/O YASMINE FARHANG, ESQUIRE  
MAKE THE ROAD NY  
9210 ROOSEVELT AVE  
JACKSON HEIGHTS NY 11372

DATE: MAY 15, 2018

FILE #: A [REDACTED]  
PETITION RECEIPT #: EAC [REDACTED]  
I-290B RECEIPT #: EAC [REDACTED]

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:

YASMINE FARHANG, ESQUIRE  
MAKE THE ROAD NY  
9210 ROOSEVELT AVE  
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Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Please direct any further inquiries to that office.

Thank you,

Barbara Velarde  
Chief, Administrative Appeals Office



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF M-R-B-C-

DATE: MAY 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner seeks U-1 nonimmigrant classification as a victim of qualifying criminal activity. The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity. 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 Vermont Service Center denied the petition, concluding that the Petitioner was not a victim of the qualifying criminal activity of felonious assault. On appeal, the Petitioner submits copies of previously submitted evidence, a brief, and a brief of *amicus curiae*.<sup>1</sup> Upon *de novo* review, we will remand the matter to the Director.

I. LAW

The U-1 classification affords nonimmigrant status to victims of qualifying criminal activity who suffer substantial physical or mental abuse as a result of the crime. Section 101(a)(15)(U)(i) of the Act. To be eligible for U-1 nonimmigrant status, the petitioner must also 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 "any similar activity" in violation of federal, state, or local criminal law. Felonious assault is one of the qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act. The term "any similar activity" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutory list of qualifying criminal activities. 8 C.F.R. § 214.14(a)(9).

A U petition must be filed with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying that the petitioner was a victim of

<sup>1</sup> Jennifer L. Colyer of Fried, Frank, Harris, Shriver & Jacobson LLP submitted the brief as counsel for *amicus curiae* ASISTA Immigration Assistance and the Immigration Center for Women and Children. We thank *amicus curiae* for their contribution.



qualifying criminal activity that the certifying agency is investigating or prosecuting, possesses information about the crime, and "has been, is being, or is likely to be helpful" in the detection, investigation or prosecution of the crime. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5), (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 additional evidence along with the Supplement B to establish U-1 eligibility, we determine, in our sole discretion, the credibility of and the weight to give 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 Evidence and Procedural History

The Petitioner filed his U petition with a Supplement B signed by the Director of the Immigrant Affairs Program at the New York City District Attorney's Office (certifying agency), based on an August 2013 incident in which the Petitioner was physically attacked by a co-worker. In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the certifying agency indicated that the Petitioner was a victim of criminal activity involving or similar to "Felony Assault," "Related crimes," and "Attempt to commit any of the named crimes." In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying agency listed assault in the third degree under section 120.00(1) of the New York Penal Law and referenced the criminal complaint for the Criminal Court of the City of New York, which further charged the defendant with assault in the third degree, attempted assault in the third degree, and harassment in the second degree, in violation of New York Penal Law sections 120.00(2), 110/120.00(1), and 240.26(1), respectively. The New York Penal Law classifies each of the crimes charged as misdemeanor offenses. The factual basis for the charges in the criminal complaint is that the defendant struck the Petitioner "on the face multiple times with a closed fist." Regarding known or documented injury, both the criminal complaint and Part 3.6 of the Supplement B stated that the Petitioner sustained "a broken nose, bleeding from the nose and lip, contusions around the eye, a contusion on his head, and substantial pain."

The Petitioner also submitted medical records from August 2013 through January 2014 indicating that his injuries included a comminuted nasal bone fracture which required surgery, right periorbital soft tissue swelling, pain in the left leg, a left wrist sprain, cervical disc displacement, and pain in the lumbar spine as a result of the assault.

### B. The Petitioner is a Victim of Felony Assault

In her decision, the Director examined the New York assault statutes and determined that, because law enforcement only provided statutory citations for misdemeanor offenses in Part 3.3 of the



Supplement B as the crimes investigated or prosecuted, the Petitioner did not establish that he was a victim of the qualifying criminal activity of felonious assault. On appeal, the Petitioner and *amicus curiae* do not dispute that the crimes listed in Part 3.3 of the Supplement B do not correspond to the New York felony assault statute. Rather, they assert that qualifying criminal activity includes crimes that law enforcement detected and that, rather than considering only the crimes that were actually charged against the perpetrator, as indicated in Part 3.3 of the Supplement B, the Director should have considered the underlying record and the certifying agency's statement that the Petitioner "is a victim of criminal activity involving or similar to ... Felonious assault" at Part 3.1 of the Supplement B and determined that the Petitioner was a victim of felonious assault.

U petitioners must establish that the certifying agency detected, investigated or prosecuted qualifying criminal activity as perpetrated against them and the record as a whole must support the certification of that victimization in order to establish a petitioner's eligibility for U nonimmigrant status. Section 214(p)(1), (4) of the Act; 8 C.F.R. § 214.14(c)(2)(ii), (4). In this case, the Director correctly noted that the crimes certified as "investigated or prosecuted" on Part 3.3 of the Supplement B did not match those of which the Petitioner was certified to be a victim of on Part 3.1 of the Supplement B, but incorrectly determined that this apparent inconsistency negated the Petitioner's claim to be a victim of felonious assault.

The Supplement B is required evidence which informs, but does not solely determine, whether a U petitioner is a victim of qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i)-(ii), (c)(4). Part 3.1 of the Supplement B asks the certifying official to verify that "[t]he petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity)[,]" and then provides check boxes corresponding to the 28 qualifying criminal activities provided for in section 101(a)(15)(U)(iii) of the Act. Part 3.3 then asks the certifying official to list the specific statutory citation for the criminal activity the certifying agency "investigated or prosecuted." U.S. Citizenship and Immigration Services (USCIS) reviews the specific statutory citation in Part 3.3 to discern whether it "is that involving ... or any similar activity" to the qualifying crime checked in Part 3.1 and if not, whether the preponderance of all the relevant, credible evidence otherwise shows that the Petitioner was the victim of qualifying criminal activity which the certifying agency detected, investigated or prosecuted as having been committed against the Petitioner. Section 101(a)(15)(U)(iii) of the Act. See 8 C.F.R. § 214.14(2)(i)-(ii), (4) (specifying the Supplement B as required initial evidence, which USCIS will consider in conjunction with any other relevant evidence, the credibility and evidentiary weight of which USCIS will determine within its sole discretion).

Here, the equivalent crime to felonious assault in New York is assault in the second degree. A person is guilty of assault in the second degree, a Class D felony, when, "[w]ith intent to cause serious physical injury to another person, he causes such injury to such person or to a third person..." N.Y. Penal Law § 120.05(1) (McKinney 2013). "Serious physical injury" includes "physical injury which... causes ... protracted impairment of health." *Id.* at § 10.10. In addition, intent to cause serious physical injury can be inferred by the actions of the perpetrator. See, e.g., *People v. Walker*, 30 A.D.3d 215, 816 N.Y.S.2d 466 (N.Y. App. Div. 2006) (finding evidence that



defendant slashed victim's face with a razor was sufficient to establish intent to cause serious physical injury as required for conviction of assault in the first degree).

In the instant case, the certifying agency did not list the New York felonious assault statute. Rather, the certifying agency cited to assault in the third degree under New York law, a Class A misdemeanor, which is committed when an individual, "[w]ith intent to cause physical injury to another person, [] causes such injury to such person or to a third person..." N.Y. Penal Law § 120.00(1) (McKinney 2013). "Physical injury" is defined as "impairment of physical condition or substantial pain." *Id.* at § 10.09. The primary distinction between assault in the second degree and assault in the third degree under New York law is the severity of the intended and inflicted injury. Assault in the third degree, the misdemeanor offense, requires the perpetrator to intend to cause, and actually cause "physical injury," while assault in the second degree, the felony offense, requires the perpetrator to intend to cause, and actually cause "serious physical injury."

In her decision, the Director concluded that, because the certifying agency listed only section 120.00(1) of the New York Penal Law, and not section 120.05(1), the felony crime, in Part 3.3 of the Supplement B, that the certifying agency did not detect, investigate, or prosecute felonious assault as having been committed against the Petitioner. The Director did not address or accord any weight to the certifying agency's decision to check the box for "Felonious assault" in Part 3.1 of the Supplement B as a crime of which the Petitioner was a victim. The Director also did not discuss the relevance, if any, of the facts provided in the narrative portion of the Supplement B, criminal complaint, and other evidence in the record regarding the crimes the certifying agency detected, investigated, or prosecuted as perpetrated against the Petitioner.

Here, as the statutory citations provided in Part 3.3 of the Supplement B as "investigated or prosecuted"<sup>2</sup> do not correspond to the crime checked in Part 3.1 of which the Petitioner was a victim, we must determine whether the preponderance of other relevant and credible evidence in the record shows that the certifying agency detected second degree assault under New York law as perpetrated against the Petitioner. On appeal, the Petitioner has established that the certifying agency detected that the perpetrator intended to cause, and actually caused, "serious physical injury" to the Petitioner, per section 120.05(1) of the New York Penal Law.

The Supplement B, police report and criminal complaint provided specific information regarding the pain and injuries suffered by the Petitioner, including damage to his nose, lip, eye, and head. The Supplement B also referred to the description of the criminal activity provided in the criminal complaint, which stated that the defendant struck the Petitioner "on the face multiple times with a closed fist, causing a broken nose, bleeding from the nose and lip, contusions around his eye, a contusion on his head, and substantial pain." The certifying agency's knowledge of the Petitioner's

<sup>2</sup> Although the regulatory definition of "investigation or prosecution" includes "detection" of qualifying criminal activity, 8 C.F.R. section 214.14(a)(5), the Supplement B signed by the certifying agency only requested the statutory citations for crimes that were "investigated or prosecuted."



injuries is particularly relevant because the distinguishing factor between misdemeanor assault in the third degree and felony assault in the second degree under New York law is whether the victim suffered "physical injury" or "serious physical injury," respectively. The Petitioner provided contemporaneous medical records below confirming that he suffered a broken nose which required surgery. He further explained that, as a result of the assault, he suffers from periodic spells of blurry vision which last for up to one hour. He provided additional medical records indicating that as of January 2014, more than four months following the assault, he remained fully disabled and had not returned to work, due to injuries to his head as well as other injuries.<sup>3</sup>

Although the statutory citations provided in Part 3.3 of the Supplement B are for misdemeanor offenses, the relevant evidence, when considered in the aggregate credibly demonstrates that the certifying agency detected injuries to the Petitioner's nose, eye, and head that resulted in protracted impairment of his health, constituting "serious physical injury." In addition, under New York law, the perpetrator's intent to cause these injuries may be inferred from the injuries themselves. Consequently, we accord significant weight to the certifying agency's attestation that the Petitioner was the victim of felonious assault in Part 3.1 of the Supplement B and the record shows the certifying agency detected felonious assault as having been committed against him.

On appeal, the Petitioner and *amicus curiae* also assert that the Director erred in not considering whether the crimes of which the Petitioner was a victim fall more broadly within the general crime category of felonious assault. They argue that USCIS focuses too narrowly on analyzing the elements of the crimes listed in Part 3.1 of the Supplement B as having been investigated or prosecuted, rather than considering the underlying record. They reference Administrative Appeals Office (AAO) non-precedent decisions determining that contempt of court, harassment, assault, and attempted murder were considered to involve or be related to domestic violence, because we looked at the underlying facts to understand the nature of the crime. However, unlike the qualifying crime of domestic violence, where the relationship between victim and perpetrator is material to a determination of whether the offense "is that involving ... domestic violence" under section 101(a)(15)(U)(iii) of the Act, what is considered a felony crime depends on the applicable law where the crime occurred and the record must establish the elements of the felonious assault offense.

In this case, the Supplement B, criminal complaint, police report, and contemporaneous medical records show that the perpetrator intended and actually caused serious physical injury to the Petitioner and the certifying agency detected assault in the second degree, a felony offense under New York law, as perpetrated against the Petitioner. Consequently, the Petitioner has established that he was the victim of a felonious assault.

<sup>3</sup> In the record below, the Petitioner submitted medical records and a personal statement describing further injuries to his leg, wrist, cervical disc, and lumbar spine as a result of the assault. However, as the evidence regarding the certifying agency's detection of the crime—including the Supplement B, criminal complaint, and police report—does not reference these additional injuries, they are not indicative of whether the certifying agency detected that the Petitioner was a victim of qualifying criminal activity. However, these injuries may be relevant to whether the Petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, per section 101(a)(15)(U)(i) of the Act.



*Matter of M-R-B-C-*

### C. The Remaining Eligibility Criteria for U-1 Classification

The Petitioner provided medical records from August 2013 through January 2014 documenting injuries including a comminuted nasal bone fracture which required surgery, right periorbital soft tissue swelling, pain in the left leg, a left wrist sprain, cervical disc displacement, and pain in the lumbar spine. As of January 2014, the Petitioner's doctor considered him to be fully disabled and noted that he had not held gainful employment since the August 2013 incident. On appeal, the Petitioner claims that the Director determined that the Petitioner did not suffer substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity and did not meet the other eligibility criteria. However, the Director did not reach the merits of the Petitioner's eligibility under the remaining criteria. Rather, the Director concluded that because the Petitioner was not the victim of qualifying criminal activity, he could not establish resultant substantial physical or mental abuse or any of the remaining eligibility criteria under section 101(a)(15)(U)(i) of the Act.

### III. CONCLUSION

The Petitioner has overcome the Director's ground for denial and established that he was a victim of felonious assault, a qualifying criminal activity. The matter will be remanded to the Director to determine the Petitioner's eligibility under the other requirements for U-1 nonimmigrant status.

**ORDER:** The matter is remanded to the Director for further proceedings consistent with this opinion and for the entry of new decision, which, if adverse to the Petitioner, shall be certified to us for review.

Cite as *Matter of M-R-B-C-*, ID# 1114583 (AAO May 15, 2018)