



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

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

In Re: 21606485

Date: APR. 5, 2022

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), and we dismissed the Petitioner’s subsequent appeal. The matter is now before us on a motion to reconsider. The Petitioner submits a brief reasserting his eligibility. Upon review, we will dismiss the motion.

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. 369, 375 (AAO 2010). 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.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners 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 victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). 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).

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 the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, filed his U petition in October 2015 with a Form I-918, Supplement B, U nonimmigrant Status Certification (Supplement B), certifying that he was the victim of criminal activity involving or similar to “Attempt to commit any of the named crimes,” “Related Crimes” and “Other: DTP: Peeping Tom.” The certifying official provided the specific statutory citation investigated or prosecuted, namely Minnesota Statutes (Minn. Stat.) § 609.746.1 A 2 (interference with privacy). When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that in [REDACTED] 2014, “upon returning to his home, [the Petitioner] saw a tall male with dark clothing and a hat looking suspiciously into his house through his windows. [The Petitioner] further states that he tried following the individual, but eventually lost sight of him in his pursuit. See Police Report.” The certifying official stated that the Petitioner “did not suffer any physical injuries. However, [the Petitioner] reports that he suffered emotional and psychological trauma as a result of this incident. See Police Report.” The “Offense Information” section of the [REDACTED] Incident Report (incident report) accompanying the Supplement B references Minn. Stat. § 609.746.1 A 2 (interference with privacy). The “Description” section of the incident report states “Disturbing the Peace-Peeping Tom” and the “Level” section states “Misdemeanor.”

In our prior decision, hereby incorporated by reference, we concluded that the Petitioner had not established that he was the victim of qualifying criminal activity under section 101(a)(15)(U) of the Act. We determined, based on the record before us, that interference with privacy under section 609.746.1 A 2 of the Minn. Stat. as detected as perpetrated against the Petitioner is not a qualifying crime and is not substantially similar to stalking or any other qualifying crime under Minnesota law. We acknowledged the Petitioner's contentions that he was a victim of stalking under Minnesota law based on the factual circumstances of the offense. However, we noted that the Supplement B and the accompanying police report only referenced section 609.746.1 A 2 of the Minn. Stat. as the crime the certifying agency detected, investigated or prosecuted. We further acknowledged the Petitioner's contentions that he was the victim of stalking because “both [s]talking and invasion of privacy

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.

involved unwanted attention and a significant violation of the victim's sense of security." However, we noted that the record showed that law enforcement did not detect, investigate, or prosecute a stalking provision as perpetrated against the Petitioner. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "stalking" when committed "in violation of Federal, State, or local criminal law" as a qualifying criminal activity); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner).

We also acknowledged the Petitioner's contention that interference with privacy under Minn. Stat. § 609.746.1 A 2 is substantially similar to the qualifying crime of stalking under Minn. Stat. § 609.749. However, we noted that Minnesota law stated in pertinent part that a person engages in stalking if the perpetrator knows or has reason to know that his or her conduct "would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the [the perpetrator] and victim." Minn. Stat. § 609.749 (West 2021). We noted, at the time of the incident against the Petitioner, Minnesota law stated that a person commits interference with privacy if the person "(1) enters upon another's property; (2) surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another; and (3) does so with intent to intrude upon or interfere with the privacy of a member of the household." Minn. Stat. § 609.746 (West 2021). As a result, we concluded that the elements of interference with privacy and stalking are not substantially similar, and consequently, the Petitioner did not establish that the nature and elements of interference with privacy are substantially similar to stalking.

On motion, the Petitioner again contends that he is eligible for U nonimmigrant status. However, he repeats similar arguments which were made on appeal regarding interference with privacy, while requesting a different outcome. Specifically, he argues that because the offense involved the perpetrator being caught looking into the windows of his children on multiple occasions, he was the victim of stalking, as the penalties for interference with privacy increase when frequency and minor children are associated with the offense. The Petitioner further argues that Minnesota law closely linked interference with privacy with stalking and points out a list of crimes under Minn. Stat. § 609.749.5(b) where stalking would be considered. Notably, however, the list of associated statutes under Minn. Stat. § 609.749.5(b) does not contain a reference to Minn. Stat. § 609.746, which was certified on the Supplement B as the criminal activity of which the Petitioner was a victim. Because these facts and arguments are cumulative to evidence already submitted and considered, and in the absence of evidence establishing error in our prior decision, the Petitioner has not met the requirements for a motion to reconsider. As we stated above, the Petitioner 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). Here, he has not satisfied that requirement as he has not demonstrated any error in our prior decision finding that he is not the victim of the qualifying crime of stalking.

III. CONCLUSION

The Petitioner has not established that our prior decision concluding that he was not the victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act 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). Accordingly, his motion to reconsider our prior adverse decision is dismissed.

ORDER: The motion to reconsider is dismissed.