U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20331387

Date: APR. 5, 2022

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 Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief asserting that she has established eligibility for U-1 nonimmigrant classification. 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

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners'

helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all 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 February 2016 with a Supplement B signed and certified by a detective in the [redacted] Police Department in [redacted] Indiana (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity "Other: strong armed robbery" that occurred in [redacted] 2009. The certifying official cited to section 35-42-5-A (Robbery) of the Indiana Code Annotated (Ind. Code Ann.) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, as well as any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner "was grabbed from behind and struck in the head by a weapon of some variety" and that the Petitioner "was lacerated by the blow to the top of her head and did go to the hospital. In addition, she has been treated for anxiety and depression as a result of being attacke[ed] in her home." The police report accompanying the Supplement B identified the incident as a strong-arm robbery and did not cite to a specific Indiana statute. The narrative section of the police report confirmed that police officers were dispatched to the scene "on a robbery of a person." The Petitioner's affidavit confirms the information in the incident report. The Petitioner's affidavit along with medical records in the record indicated that she sought medical treatment for the laceration on her head on the same night that the robbery occurred. The medical records indicated that she sought psychological counseling in 2009 and presented symptoms of post-traumatic stress disorder and depression due to the robbery.

After reviewing the evidence in the record, the Director issued a request for evidence (RFE) for additional evidence that the crime listed on the Petitioner's Supplement B was a crime related to those listed in the statute and implementing regulations. The Petitioner responded timely and submitted a brief, relevant portions of Indiana law, and previously submitted documents. The Director subsequently denied the U petition, finding that robbery and misdemeanor battery were detected and investigated. She went on to hold that neither robbery, under Ind. Code Ann. section 35-42-5-A, nor misdemeanor battery, under Ind. Code Ann. section 35-42-2-1, were qualifying criminal activities. The Director also determined that the robbery committed against the Petitioner did not rise to the level of aggravated battery, under Ind. Code Ann. section 35-42-2-2. The Director concluded that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity.

[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.

On appeal, the Petitioner does not contest the Director's conclusion that robbery and misdemeanor battery, under Indiana law, are not qualifying criminal activities. Instead, The Petitioner argues that she was the victim of battery with a deadly weapon, which is a felonious assault. The Petitioner further contends that robbery under section 35-42-5-A of the Ind. Code Ann. (2009) is substantially similar to the qualifying crime of felonious assault.

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

The Act requires U petitioners to demonstrate their helpfulness 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 includes "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, 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 . . . .").

Robbery was identified in the supplement B and in the police report as the crime that was detected, investigated, or prosecuted. The Director also held that the Petitioner was a victim of misdemeanor battery, but not aggravated battery. These offenses are not specifically listed as qualifying crimes at section 101(a)(15)(U)(iii) of the Act, and the Petitioner does not contest the Director's conclusion that robbery and misdemeanor battery are not included in the categories of qualifying crimes.

However, on appeal, the Petitioner asserts that the evidence demonstrates that she was a victim of battery with a deadly weapon, under Ind. Code Ann. section 35-42-2-1(3), [2] and that battery with a deadly weapon is a felonious assault. However, the record does not indicate that she was a victim of battery with a deadly weapon, pursuant to Ind. Code Ann. 35-42-2-1(3) (2009). In 2009, Indiana law defined a "deadly weapon" as "(1) a loaded or unloaded firearm, (2) a destructive device weapon, device, taser or electronic stun weapon, equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury" or an animal or biological disease. *See* Ind. Code Ann. § 35-41-1-8 (2009). Here, the evidence in the record, including the Supplement B, the police report, and the Petitioner's affidavit, indicated that the type of instrument or weapon was unknown. The Petitioner has not therefore established that it was a "deadly weapon" as defined by Indiana law in 2009. Since the

[2] We note that the Petitioner erroneously cites to section 35-42-2-1(a)(3) of the Ind. Code Ann. when citing to battery with a deadly weapon, which describes batter against an employee of the department t of correction. Battery with a deadly weapon is described in section 35-42-2-1(3) of the Ind. Code. Ann. (2009), and we will discuss the latter in this opinion.

Petitioner did not show that she was a victim of battery with a deadly weapon, her argument that it constitutes felonious assault is moot. [3]

Accordingly, the record does not show that law enforcement detected felonious assault or battery with a deadly weapon, and the offenses of robbery and misdemeanor battery that were detected are not amongst the qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act.

C. The Criminal Activity Detected, Investigated, or Prosecuted under California Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

When a certified offense is not a qualifying criminal activity 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. *Id.* 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).

In her brief on appeal, the Petitioner contends that the robbery statute in Indiana is substantially similar to felonious assault. The Petitioner concedes that the Director correctly compared the general crime of felonious assault and the robbery statute in Indiana. However, the Petitioner argues that the Director should have also analyzed whether the robbery statute in Indiana meets the elements of aggravated assault as defined by the Model Penal Code (MPC). The facts of the Petitioner's case may be considered when evaluating the criminal activity that was detected, investigated, or prosecuted. *See* 8 C.F.R. § 214.14(b)(2) (that allows consideration of specific facts because "[t]he alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity"). But when determining whether two statutes are substantially similar, we only study the nature and the elements of both offenses. *See* 8 C.F.R. § 214.14(a)(9) (describing process to determine substantial similarities between two statutes).

[3] The Petitioner also contends that battery with a deadly weapon, under Ind. Code Ann. section 35-42-2-1(3), is substantially similar to felonious assault. However, this argument is also moot because we found that she was not a victim of battery with a deadly weapon.

Futher, the appropriate comparison to whether a crime detected in a U petition is substantially similar to a qualifying criminal activity begins with an evaluation of the laws the certifying law enforcement agency has jurisdiction over. *See* section 101(a)(15)(U)(i)(III) of the Act and section 214(p)(1) of the Act; *see also* 8 C.F.R. § 214.14(a)(2), (b)(3), and (c)(2)(i). In this case, the certifying law enforcement agency, the Indianapolis Metropolitan Police Department, enforces Indiana state law. In contrast, the MPC is a model act designed to assist states in updating and standardizing their penal laws (not a law of jurisdiction in and of itself). Therefore, in this case, because statutes in Indiana exist that are substantially similar to felonious assault (aggravated battery under Ind. Code Ann. 35-42-2-2, as analyzed by the Director), the MPC does not provide a proper comparison. *See* section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(2), (a)(9) and (c)(2)(i).

Ind. Code Ann. 35-42-2-2 provides the appropriate comparison to the qualifying criminal activity of felonious assault, and the Petitioner does not contend that the Director erred in her analysis of whether the robbery rose to the level of aggravated battery under Indiana law and does not engage in her own analysis and comparison of the Indiana aggravated battery statute and the Indiana robbery statute. As stated above, the burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. at 376. Here, she has not met that burden. Thus, we find the Applicant has not established that the certified crime of robbery or misdemeanor battery is substantially similar to felonious assault.

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

ORDER: The appeal is dismissed.