U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23752818

Date: DEC. 20, 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) on two grounds. First, the Director concluded that the Petitioner had not provided a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) from an appropriate certifying authority. Second, the Director concluded that the Petitioner had not established that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The Director concurrently denied the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application) due to the denial of the underlying U Petition. The matter is now before us on appeal.[1] 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

U petitioners must establish their eligibility for U-1 nonimmigrant classification by demonstrating that they meet the requirements set forth in the Act and regulations, which include, *inter alia*:

> The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or

[1] The Petitioner submitted the I-290B three times. The Vermont Service Center rejected the first two filings because the form listed a receipt number for the U Petition as well as for the concurrently-filed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The regulations do not mandate rejection based upon the erroneous listing of two receipt numbers on the Form I-290B. *See* 8 C.F.R. § 103.2(a)(7)(ii) (providing reasons for rejecting a benefit request). Furthermore, the Form I-290B instructions do not indicate that the Form I-290B will be rejected for listing multiple receipt numbers. *See USCIS, Instructions for Notice of Appeal or Motion*, (December 2, 2019). Accordingly, the Petitioner's initial I-290B was timely filed and erroneously rejected, and we will adjudicate his I-290B.

> suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level.

Section 214(b)(1) of the Act; 8 C.F.R. § 214.14(b)(1).

U petitioners must also establish that qualifying criminal activity was perpetrated against them, and that the certifying agency detected, investigated, or prosecuted this qualifying criminal activity. 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).

The Act requires U petitioners to demonstrate that they 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 Act defines a certifying agency as an authority "that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity." Section 214(a)(2) of the Act; 8 C.F.R. § 214.14(a)(2).

II. ANALYSIS

The Petitioner's daughter lived with her mother after the couple separated; there was no custody arrangement in place, and the Petitioner's daughter was taken from the home without the Petitioner's involvement or consent. In [redacted] 2007, Oregon's Department of Human Services (ODHS) initiated an investigation into the daughter's living situation, assisted by an officer of the [redacted] Police Department [redacted] PD). ODHS informed the Petitioner that his ex-wife's boyfriend had moved into the home where his daughter lived. The new boyfriend was a convicted and untreated predatory sex offender who had been left unsupervised with the Petitioner's daughter. Due to the threat of harm from this living arrangement, ODHS entered into an agreement with the Petitioner's ex-wife. The agreement prohibited contact between her daughter and boyfriend and prohibited the boyfriend from residing in the home. ODHS then closed the investigation.

In 2010, ODHS received information that the Petitioner's daughter continued to reside with the boyfriend and had been left unsupervised with him. ODHS opened a new investigation into the threat of neglect and sexual abuse. The [redacted] Sheriff's Office [redacted] located the Petitioner's daughter at his home and made initial contact with the Petitioner. The Petitioner's daughter was removed from the ex-wife's home by ODHS and [redacted] due to founded concerns of neglect and the threat of sexual abuse; she was placed with the Petitioner. The Petitioner cooperated with ODHS and pursued permanent custody of his daughter. The Petitioner's divorce was finalized in 2011 and the

family court awarded him sole legal and physical custody. The Petitioner filed his U petition in 2016. In support of his U Petition, the Petitioner submitted a Supplement B signed by [redacted]

After receipt of the U Petition, the Director issued a request for evidence (RFE), directing the Petitioner "to submit evidence to show that [redacted] Sheriff's Office was the authority which investigated or prosecuted the qualifying crime" or, in the alternative, provide a new Supplement B. The Director's RFE noted that the investigating agencies appeared to be either ODHS or [redacted] PD. The RFE also instructed the Petitioner to provide additional evidence to show he suffered substantial physical or mental abuse.

After review of the RFE response, the Director denied the U Petition, finding that the Petitioner had not established a proper certifying authority on the Supplement B. The Director acknowledged that [redacted] participated in removing the Petitioner's daughter from the home, but determined [redacted] was not involved in detecting or investigating the cited crime. Rather, ODHS investigated and prosecuted the criminal activity. The Director also determined that the Petitioner did not establish suffering substantial physical or mental abuse as a result of qualifying criminal activity.

On appeal, the Petitioner argues that the original [redacted] Supplement B was sufficient and provides a new Supplement B from [redacted] PD. The Petitioner also contests the finding that the mental harm suffered was not substantial. We address each argument below.

We agree with the Director's determination that ODHS was the primary agency involved in the investigation and detection of the crime. However, there is no requirement in the statutes or regulations that the Supplement B be signed only by the primary agency. As outlined above, a certifying agency may be any authority with responsibility for the investigation or prosecution of a qualifying crime. Section 214(a)(2) of the Act; 8 C.F.R. § 214.14(a)(2).

While the involvement of the [redacted] in the investigation or prosecution is not as readily apparent as the involvement of [redacted] PD in 2007 or ODHS in 2007 and 2010, a preponderance of the evidence establishes that [redacted] qualifies as an investigating agency. In the 2010 ODHS assessment summary, the section calling for "LEA Information" lists [redacted] and the summary notes the case was cross reported to [redacted] This summary also indicates that it was a [redacted] deputy who located the Petitioner's daughter and initially contacted the Petitioner.

In response to the RFE, the Petitioner also provided a letter from [redacted] PD which confirmed [redacted] PD was not involved in 2010, the incident occurred in unincorporated [redacted] and a deputy was involved in the removal of a child from her home. The letter indicates the removal occurred on [redacted] 2010, which matches the date of the LEA information from the 2010 ODHS assessment summary. Because the law enforcement action occurred in an unincorporated area, it was [redacted] that had jurisdiction.

When considered together, these documents are sufficient to establish that [redacted] was involved in the investigation by locating the Petitioner's daughter and contacting the Petitioner. [redacted] further assisted by removing the Petitioner's daughter from her home. At the time of these actions, the Petitioner's daughter was the suspected victim of child neglect and was feared to be at risk of sexual abuse. While ODHS had the authority to address these allegations in a dependency or family court

proceeding, these allegations were also criminally punishable under Oregon law. Or. Rev. Stat. Ann. §§ 163.545, 163.415 (2010) (criminalizing child neglect and sexual abuse). As a local law enforcement agency, [redacted] had the responsibility for the investigation of criminal activity in its jurisdiction, including the types of crimes at issue in this case. Therefore, [redacted] was also an investigating agency and is a proper certifying authority. Based on the foregoing, the Petitioner has overcome the Director's determination that the [redacted] Supplement B was not executed by a certifying agency. On remand, the Director may also consider the [redacted] PD Supplement B.

The Director also denied the U petition after concluding that the Petitioner did not show substantial physical or mental abuse. The Petitioner initially provided an affidavit, court and investigation records, and a mental health assessment prepared in 2015. In response to the RFE, the Petitioner provided a supplemental affidavit, a doctor's letter from 2021, and affidavits and letters from friends and family. The Director found that the 2021 doctor's letter conflicted with the 2015 assessment. In addition to documenting overall concerns with the evidentiary value of the 2021 doctor's letter, the Director's decision noted that it found the description of the Petitioner's daughter being "taken" from the Petitioner to be inconsistent with other facts in the record. The Director therefore found the "evidence provided to establish substantial abuse is inconsistent." Based in part on these perceived inconsistencies, the Director determined that the Petitioner did not establish substantial mental harm.

On appeal, the Petitioner asserts that the 2015 examination is "irrelevant to the harm he suffered in 2010," as a mental health assessment can only show mental state on the date of the assessment. The Petitioner also responds more generally to the determination that the provided evidence was inconsistent, proffering various explanations for the perceived inconsistencies and highlighting factors tending to establish the severity of the harm suffered. Because the Director did not alert the Petitioner to any possible inconsistencies regarding substantial abuse after receiving the RFE response, these arguments were not considered prior to issuance of the Director's decision. As a result, we will remand for the Director to consider the Petitioner's rebuttal of the perceived inconsistencies and for a determination of whether the Petitioner's mental suffering was sufficiently serious to be considered substantial when considering all regulatory factors and the record as a whole.

We further note that the present record does not otherwise establish the Petitioner's eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. The Director's decision did not address whether the crime or crimes committed against the Petitioner's daughter, and for which the Petitioner applied as an indirect victim, were qualifying crimes or substantially similar to qualifying crimes.[2] Although the Petitioner argues that the nature and severity of the mental suffering rises to the level of substantial harm and any perceived inconsistencies do not impact this determination, this is not the only requirement of the substantial abuse eligibility ground. The regulations also require that this abuse must be suffered "as a result of having been a victim of qualifying criminal activity." 8 C.F.R. § 214.14(b)(1). There is no question that the Petitioner's

[2] The [redacted] Supplement B lists "Abusive Sexual Contact," "Rape," "Sexual Assault," "Sexual Exploitation," "Related Crimes" and "Other," as the qualifying criminal acts. The certifying official cited to the Oregon statutes for child neglect in the second degree and sexual abuse in the third degree. Or. Rev. Stat. Ann. §§ 163.545, 163.415 (2010). The [redacted] PD Supplement B lists "Abusive Sexual Contact" and cites to child neglect in the second degree only. The Director has not made an initial determination as to whether the criminal offenses listed on these forms are supported by the record. In addition, the Director has not yet determined whether the cited statutes are qualifying crimes or substantially similar to qualifying crimes under the Act.

daughter was exposed to a living situation that placed her at untenably high risk of severe harm. However, it remains the Petitioner's burden to establish whether this severe risk ultimately resulted in the commission of a qualifying crime and, therefore, whether his mental suffering is relevant to his U petition. In addition, the Director's decision did not address whether the Petitioner "possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity" or "specific facts regarding the criminal activity" as required by Section 214(b)(2) of the Act. 8 C.F.R. § 214.14(b)(2). The record reflects that the Petitioner cooperated with ODHS and ultimately won custody of his daughter, but the Director must determine whether the Petitioner had knowledge of the offenses committed against his daughter sufficient to support a law enforcement certification on the Supplement B. *Id.* We will remand the case to the Director for further consideration of the Petitioner's eligibility and the issuance of a new decision on the U petition and the waiver application.

III. CONCLUSION

On appeal, the Petitioner has overcome the first ground of the Director's denial, establishing the original Supplement B certifying agency, [redacted] investigated the underlying offense. The Petitioner has also raised new arguments with respect to the determination of substantial mental abuse that are properly decided by the Director in the first instance. The record does not otherwise establish the Petitioner's eligibility for U nonimmigrant classification. We will therefore remand the case for the Director for an initial determination as to whether the Petitioner was the indirect victim of qualifying criminal activity, whether he suffered substantial mental abuse as a result of that criminal activity, and whether he had credible and reliable information and knowledge of the details of any underlying qualifying criminal activity which could be shared with law enforcement.

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.