U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20083428

Date: February 3, 2022

Appeal of Nebraska 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and the matter is before us on appeal. The Administrative Appeals Office (AAO) reviews all 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, a native and citizen of Mexico, filed his U petition with a Supplement B signed by the Chief of Police (certifying official) of the [redacted] Illinois Police Department (certifying agency), based on a [redacted] 2010 incident involving a residential break-in. 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 "Other—Residential Burglary." In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying agency listed 720 Illinois Compiled Statutes (Ill. Comp. Stat.) § 5/19-3, residential burglary. Additional portions of the Supplement B that request descriptions of the criminal activity being investigated and/or prosecuted, any known or documented injury, and additional information about the Petitioner's helpfulness, state, "[s]ee attachment."

The Petitioner further provided the corresponding police reports related to the incident. According to the police reports, the Petitioner's nephew, J-P-,[2] was sleeping when two males entered his room, threatened to kill him, placed him in a headlock, and took his money and other belongings. J-P- stated that the males threatened to kill him if he snitched because they had a gun. As the males were exiting, they encountered the Petitioner and J-P-'s mother and then ran out the back door. The [redacted] 2010 police report states that at this time, the Petitioner "gave chase and fell in the backyard injuring his left ankle," and that he was later transported to a hospital. This police report lists the items recovered from the backpack of one perpetrator, which does not include any weapons. The report also classifies the offenses committed that night as "Home invasion," "Battery," and "Burglary from Motor Vehicle,"[3] states that the perpetrators were arrested, and indicates that the Petitioner was a victim of battery. However, a second police report taken on [redacted] 2010, by a detective who subsequently interviewed J-P- and the perpetrators, names the same crimes but does not list the Petitioner as a victim. The record also contains documentation indicating that in [redacted] 2010, as a condition of bond, the perpetrators were ordered to have no contact with the Petitioner's family.

The Director denied the U petition, determining that the Petitioner had not demonstrated that he was a victim of qualifying criminal activity. The Director explained that the Petitioner had not established

[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.

[2] We use initials to protect the privacy of individuals.

[3] The police reports indicate that the motor vehicle, from which items were also taken, belonged to another individual, E-P-.

that residential burglary, the crime of which he was a victim, was a qualifying crime or substantially similar to the qualifying crime of felonious assault.

On appeal, the Petitioner submits additional evidence, including a *Felony Complaint* from the Circuit Court of the [redacted] Judicial District in [redacted], Illinois, indicating that the perpetrators were charged with residential burglary and burglary to motor vehicle pursuant to 720 Ill. Comp. Stat. §§ 5/19-3 and 5/19-1(a), respectively. The residential burglary charge states that the perpetrators "knowingly and without authority, entered into the dwelling place of [J-P-]. . . with the intent to commit therein a felony or theft." The complaint further reflects that one perpetrator was charged with battery pursuant to 720 Ill. Comp. Stat. § 5/12-3(a)(2) for his actions toward J-P-, by "knowingly [making] physical contact of an insulting nature with [J-P-], in that he put [J-P-] in a headlock, and placed his hand over [J-P-'s] mouth." The Petitioner also provides criminal sentencing orders evincing that each perpetrator was convicted of burglary, a class 2 felony, under 720 Ill. Comp. Stat. § 5/19-1.

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

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 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 . . . .").

On appeal, the Petitioner argues that based on the [redacted] 2010 police report, the certifying agency clearly detected or investigated home invasion and battery as having been committed against him. However, the record does not support the Petitioner's claim. The Supplement B states that that the Petitioner was a victim of residential burglary and provides the corresponding statutory citation, 720 Ill. Comp. Stat. § 5/19-3. Notably, the Supplement B does not contain an explanation of the factual circumstances of the underlying criminal activity, but instead refers to police reports which state, with regard to the Petitioner, that he "gave chase" to the perpetrators as they were fleeing, fell, and injured his ankle. Although the [redacted] 2010 police report states that the relevant offenses are "Home invasion," "Battery," and "Burglary from Motor Vehicle," and indicates that the Petitioner was a victim of battery, the [redacted] 2010 police report does not list him as a victim of any crime. Moreover, documentation from subsequent criminal proceedings reflects that the perpetrators were charged with residential burglary specifically related to J-P- and burglary of the motor vehicle belonging to E-P-, that one perpetrator was charged with battery based on his actions toward J-P-, and that both perpetrators were convicted of burglary. As such, although the Supplement B is internally consistent in stating that the certifying agency detected, investigated, or prosecuted residential

burglary as having been committed against the Petitioner, the record as a whole is inconsistent regarding the crimes of home invasion and battery.

The Petitioner further argues that the Director erred in focusing on the police report's finding that the perpetrators were unarmed, because one of the perpetrators threatened him with a gun and the fact that it was not recovered is irrelevant. He maintains that as he was chasing the perpetrators, he was able to grab hold of one of the males, but lost his grip and fell, at which time one of the perpetrators threatened to shoot him if he continued to chase after them. Upon *de novo* review, the Director appears to have erroneously attributed the threat to kill J-P- with a gun if he snitched, as related in the police report, as having been made against the Petitioner. Rather, the police report states that J-P-, and not the Petitioner, reported that the perpetrators threatened to harm him with a gun. Although the Director correctly noted that a February 2021 psychological evaluation submitted by the Petitioner states that the Petitioner reported that one of the perpetrators said he was going to kill the Petitioner, and pointed a gun at him, this statement is inconsistent with the information provided to police officers immediately following the incident. Given this discrepancy, information provided in the psychological evaluation and personal statement—in which the Petitioner also claims that a perpetrator pointed a gun at him—without corroborating evidence from the certifying agency, does not establish the crimes detected, investigated, or prosecuted by the certifying agency. *See* section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3) (requiring that the qualifying criminal activity actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner).

As previously stated, 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. To satisfy their burden under the preponderance of the evidence standard, petitioners must demonstrate that their claims are "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Moreover, 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).

Here, the preponderance of the evidence establishes that the certifying agency detected or investigated residential burglary as having been committed against the Petitioner. However, due to unresolved inconsistencies in the record and a lack of explanatory detail in the Supplement B or other supporting evidence from the certifying agency to resolve these discrepancies, the Petitioner has not met his burden to establish that it is "more likely than not" that the certifying agency detected or investigated that he was a victim of home invasion or battery. *See Matter of Chawathe*, 25 I&N Dec. at 376.

C. Residential Burglary under Illinois 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. 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 contends that the crimes of home invasion and battery are substantially similar to aggravated assault, the Illinois state law equivalent to the qualifying crime of felonious assault. As discussed in Part II. B., *supra*, the Petitioner has not established that the certifying agency detected, investigated, or prosecuted home invasion or battery as committed against him; as such, we do not reach this issue.

Rather, the record reflects that the Petitioner was a victim of residential burglary. Under Illinois law, residential burglary, a Class 1 felony, occurs, as relevant here, when a person "knowingly and without authority enters or knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft." 720 Ill. Comp. Stat. § 5/19-3(a). On the other hand, assault, a class C misdemeanor, occurs when, "without lawful authority, [a person] knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 Ill. Comp. Stat. § 5/12-1(a). Aggravated assault, which may be punished as a misdemeanor or felony, involves an aggravating factor such as committing an assault against an individual in certain public spaces and places of religious worship; when a person commits an assault against a personal with a physical disability, a person 60 years of age or older and the assault is without legal justification, or is a teacher or school employee or on school or adjacent grounds; committing an assault against park district employees, peace officers, emergency rescue personnel, or other workers; or the assault involves use of a firearm, device, or motor vehicle. 720 Ill. Comp. Stat. § 5/12-2. Upon *de novo* review, residential burglary and aggravated assault under Illinois law are not substantially similar, as residential burglary does not contain the conduct required for assault as an element, and the aggravated assault statute does not involve an unauthorized entry into a dwelling or the intent to commit a felony or theft, which is required for residential burglary.

Based on the foregoing, the Petitioner has not established the nature and elements of residential burglary are substantially similar to a felonious assault in Illinois and has not demonstrated that he was a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act. Consequently, the Petitioner has not established his eligibility for U-1 nonimmigrant status.

ORDER: The appeal is dismissed.