U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12512847

Date: FEBRUARY 7, 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), concluding that the Petitioner did not establish that she was the victim of a qualifying crime or otherwise establish eligibility for U nonimmigrant status. The matter is now before us on appeal. On appeal, the Petitioner submits new evidence and a brief arguing that she was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office reviews 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, 375 (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. 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 July 2015 with a Supplement B signed and certified by a supervisor in the [redacted] District Attorney's Office in [redacted] California (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment," and "Felonious Assault." The certifying official cited to section 242 (misdemeanor battery) of the California Penal Code (Cal. Penal Code) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity investigated or prosecuted, the certifying official indicated that the Petitioner "was cleaning somebody's house, when the houseowner started calling her stupid, and hit her on the top of her head three times, and pulled the vacum [sic] cleaner away from her by grabbing her wrist." When asked to provide a description of any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner "suffered an injury to her wrist." The police report accompanying the Supplement B first identified the crime generally as an assault and then recommended that the perpetrator of the crime be prosecuted for battery under section 242 of the Cal. Penal Code. The police report also contained a case narrative that supports the description of the crime found on the Supplement B and additionally indicated that after the perpetrator punched the Petitioner and grabbed the vacuum away from her, she yelled at the Petitioner to "get out" and "go home."

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity. The Director noted that although the Supplement B checked boxes for felonious assault and false imprisonment, there was no other evidence in the record indicating that law enforcement detected, investigated, or prosecuted felonious assault or false imprisonment as perpetrated against the Petitioner; in this regard, the certifying official provided only the statutory citation for misdemeanor battery under California law, a fact that was supported by information contained in the accompanying police report. The Director then concluded that misdemeanor battery is not a qualifying crime under the Act and is not substantially similar to any qualifying crime. The Director also noted that the police report indicated that any injury suffered by the Petitioner was minor.

On appeal, the Petitioner argues the Director erred in determining she was not the victim of the qualifying crimes of felonious assault and false imprisonment because the certifying official indicated on the Supplement B that those crimes were investigated or prosecuted.[1] She also contends that the factual circumstances of the crime establish that she was the victim of both felonious assault and false imprisonment. In support, the Petitioner submits, inter alia, an updated Supplement B, signed and

[1] On appeal, the Petitioner does not contest the Director's determination that misdemeanor battery is not a qualifying crime or substantially similar to any qualifying crime under the Act.

certified by a different certifying agency and official—the emergency services coordinator for the [redacted] Police Department (second certifying official). On the updated Supplement B, the second certifying official checked the boxes for felonious assault and false imprisonment and then provided the statutory citations for assault with force likely to produce great bodily injury and false imprisonment under sections 245(a)(4) and 236 of the Cal. Penal Code respectively as the crimes investigated or prosecuted as perpetrated against the Petitioner.

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 . . .").

In this case, the Petitioner has not met her burden of establishing by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. At the outset, in regard to the Petitioner's contention that the factual circumstances of the crime establish that she was the victim of both felonious assault and false imprisonment, evidence of what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence that the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Petitioners must establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity "in violation of Federal, State, or local criminal law." Sections 101(a)(15)(U)(i)(III), (iii) of the Act; 8 C.F.R. § 214.14(a)(2), (a)(9), (b)(3). While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. Id. Here, the Petitioner has not established that law enforcement actually detected, investigated, or prosecuted felonious assault or false imprisonment as perpetrated against her.

We acknowledge that in Part 3.1 of the updated Supplement B, the second certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault," and "False Imprisonment." We also acknowledge that in Part 3.3 of the updated Supplement B, the second certifying official cited to assault with force likely to produce great bodily injury and false imprisonment under sections 245(a)(4) and 236 of the Cal. Penal Code respectively as the specific statutory citations investigated or prosecuted as perpetrated against the Petitioner.

However, the updated Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crimes of felonious assault and false imprisonment as perpetrated against the Petitioner. See 8 C.F.R. § 214.14(c)(4) (providing that the burden "shall be on the petitioner to demonstrate eligibility" and that "USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B").

As a preliminary matter, apart from the checked boxes on the original Supplement B, none of the remaining evidence in the record cites to or references any felonious assault or false imprisonment provision under California law or otherwise indicates that a felonious assault or false imprisonment was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The original Supplement B provided the statutory citation for misdemeanor battery as the specific provision of law detected, investigated, or prosecuted. The police report, which accompanied the original Supplement B, does not reference any felonious assault or false imprisonment as perpetrated against Petitioner, or an attempt to do so. Instead, the report indicated that law enforcement detected and investigated as perpetrated against the Petitioner the crime of misdemeanor battery under section 242 of the Cal. Penal Code. Moreover, the updated Supplement B was certified by a different certifying official in a different certifying agency nearly five years after the certification of the original Supplement B and more than five years after the incident in question. It is not accompanied by a statement from the second certifying official or any other evidence explaining the reasons behind the additional statutory citations or why the Petitioner obtained the updated Supplement B from a different certifying agency.

Considering the foregoing, the updated Supplement B's checked boxes and citations to assault with force likely to produce great bodily injury and false imprisonment under California law are inconsistent with the information provided in the remainder of the record, including the original Supplement B and the police report, which served as the basis for the certification of both Supplements B. The Petitioner has not concretely addressed these inconsistencies or submitted any additional evidence that is either relevant to the inconsistencies or otherwise establishes that law enforcement, after initially classifying and describing the offense as a misdemeanor battery, actually detected, investigated, or prosecuted the qualifying crimes of felonious assault and false imprisonment as perpetrated against her. In these proceedings, the Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); Chawathe, 25 I&N Dec. at 375. Moreover, 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). Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault, false imprisonment, or any other qualifying criminal activity as perpetrated against her. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and she was the victim of, misdemeanor battery under California law, which is not a qualifying crime under the Act.

C. The Petitioner Was Not the Victim of Qualifying Criminal Activity

U petitioners must also establish that they were, in fact, victims of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act (requiring substantial physical or mental abuse as a result of having been "a victim of [qualifying] criminal activity"); 8 C.F.R. §§ 214.14(a)(14) (defining "victim of qualifying criminal activity"), (b)(1) (reiterating the requirement of suffering "substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity"), (c)(2)(ii)-(iii) (requiring evidence to establish that "the petitioner is a victim of qualifying criminal activity" and a "signed statement by the petitioner describing the facts of victimization"). In this case, the record indicates that the Petitioner was the victim of misdemeanor battery under section 242 of the Cal. Penal Code. Although the Supplements B list the criminal acts as felonious assault and false imprisonment, these documents do not establish that the perpetrator committed, and the Petitioner was in fact a victim of, felonious assault or false imprisonment under sections 245(a)(4) and 236 of the Cal. Penal Code, respectively. See 8 C.F.R. § 214.14(c)(4) (providing that the burden "shall be on the petitioner to demonstrate eligibility" and that "USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the Form I-918, Supplement B").

As a preliminary matter, the narrative to the police report accompanying the original Supplement B indicated the Petitioner was the victim of a battery and recommended that the suspect be prosecuted for a battery under section 242 of the Cal. Penal Code. The relevant evidence in the record also does not indicate that the Petitioner was actually the victim of felonious assault or false imprisonment under California law. At the time of the offense against the Petitioner, section 245(a) of Cal. Penal Code punished:

> (4) Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245(a)(4) (West 2014). "Great bodily injury" refers to "significant or substantial physical injury" and is "an injury that is greater than minor or moderate harm." Judicial Counsel of California Criminal Jury Instructions (CALCRIM) No. 821 (2021 edition). The phrase "likely to produce great bodily injury" means, in this context, that the force "is of such a nature or degree that the probable result of its application will be the infliction of great bodily injury." People v. Covino, 100 Cal. App. 3d 660, 668 (Cal. Ct. App. 1980).

At the time of the offense against the Petitioner, section 236 of Cal. Penal Code punished "the unlawful violation of the personal liberty of another." Cal. Penal Code § 236 (West 2014). California courts have "consistently defined the crime of false imprisonment as requiring restraint of a person's freedom of movement." People v. Bamba, 68 Cal. Rptr. 2d 450, 454-55 (Cal. Ct. App. 1997). To constitute false imprisonment, the crime must include some "intended confinement or restraint of the person." People v. Haney, 72 Cal. App. 3d 308, 313 (Cal. Ct. App. 1977). California courts have also determined that "personal liberty" in section 236 of Cal. Penal Code refers to freedom of movement only. People v. Von Villas, 13 Cal. Rptr. 2d 62, 94 (Cal. Ct. App. 1992).

The evidence of record indicates that the perpetrator punched the Petitioner on her head three times with a closed fist and then grabbed and forcefully removed a vacuum from the Petitioner's grasp, injuring her wrist. The original Supplement B and the police report describe the perpetrator causing an injury to the Petitioner's wrist using force to get a vacuum away from her. The updated Supplement B and a personal statement in the record describe a lasting injury to the Petitioner's wrist which continues to plague her. Medical records produced shortly after the incident indicate that the Petitioner was suffering from wrist pain, especially when using a vacuum while working, and she was diagnosed a wrist strain. None of this evidence indicates any injury as a result of the punches to the Petitioner's head. While we do not question the lasting nature the injury to Petitioner's wrist as well as the fear and shock she describes feeling during, and as a result of, the incident, the evidence in the record does not describe any significant or substantial physical injuries or pain she sustained and does not establish that the perpetrator used force "likely to produce great bodily injury" under section 245(a)(4) of the Cal. Penal Code.[2] Therefore, the Petitioner has not established by a preponderance of the evidence that she was a victim of felonious assault. In addition, the evidence does not indicate that the perpetrator intended to confine or restrain the Petitioner; it indicates that she intended to take the vacuum away from Petitioner and then have the Petitioner leave the premises. Considering the foregoing, the evidence does not establish that the Petitioner was a victim of false imprisonment under section 236 of the Cal. Penal Code. Instead, the record shows that she was the unfortunate victim of misdemeanor battery under section 242 of the Cal. Penal Code.

D. 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, or an offense that is substantially similar to a qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that she was a victim of a qualifying crime or any similar activity to a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the Petitioner is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.

[2] The record also does not contain evidence of any other aggravating factor, such as the use of a deadly weapon, or an assault against a specific class of persons, required for an assault to be classified as a felony. See, e.g., Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2020) (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults).