U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19561063

Date: FEB. 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 he was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief. 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, 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 his U petition with a Supplement B signed and certified by an interim police commissioner with the [redacted] Maryland Police Department (certifying official), based upon [redacted] 2012 and [redacted] 2014 incidents whereby his car, money, and personal property were taken from him, and he was hit with a brick that was thrown into his car window, respectively. In response to Part 3.1 of the Supplement B, which provides check boxes corresponding to the 28 qualifying crimes listed in section 101(a)(15)(U)(iii) of the Act, the certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Other: Robbery, Destruction of Property." In response to Part 3.3, which requests the specific statutory citations for the criminal activity investigated or prosecuted as perpetrated against the Petitioner, the certifying official listed assault in the second degree, robbery, carjacking, malicious destruction – generally and throwing object at vehicle, and motor vehicle theft, under sections 3-203, 3-402, 3-405, 6-301, 6-302, and 7-105 of the Annotated Code of Maryland, Criminal Law Articles (Md. Code Ann., Crim. Law), respectively.

The Supplement B additionally describes the factual basis for the charges, explaining that in 2012, four individuals surrounded the Petitioner while he attempted to deliver pizza, and stole his cellphone, cash, other personal items, and car. In 2014, two individuals approached the Petitioner during a pizza delivery and threw a brick through the rear window of his vehicle. When asked to describe any known or documented injuries to the Petitioner, the Supplement B indicated that as a result of the 2014 incident, he "suffered head trauma with associated neck and back pain after being hit on the head with a brick." It provides that the Petitioner sought medical attention at the hospital's emergency department "the same day where he was diagnosed with a closed head injury without concussion and was given Meclizine and Acetaminophen (nausea, vomiting, dizziness, and pain). Additionally, both incidents have affected [the Petitioner's] mental health and wellbeing."

The police report from the [redacted] Police Department, submitted with the Petitioner's U petition, listed the 2012 incident type as "unarmed robbery" and the 2014 incident type as "destruction of property." The record contains an intake formal action notification letter that indicates one of the offenders involved with the 2012 incident was charged with assault second degree/battery, carjacking, robbery, and traffic violation non-incarcerable. We note that concerning the 2014 incident, the report provides that one of the two men that approached the Petitioner's vehicle threw a brick through the

[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.

rear window, the men did not make any demands or say anything to the Petitioner, and no injuries occurred during the incident.

The Petitioner's personal statement submitted with his U petition, provided that, in 2012, he was the victim of second-degree assault, robbery, and carjacking. He stated that during an attempted pizza delivery, four individuals took his car, keys, cash, other personal items, and food. While the Petitioner did not indicate in his initial statement that he was threatened or physically harmed by the individuals during the 2012 incident, he noted in his second statement submitted in response to the Director's request for evidence, that five men threatened to shoot him and beat him. He also stated that he sought medical attention the next day, he was prescribed medication, and though the injuries did not require hospitalization, he was deeply traumatized.

Concerning the 2014 incident, the Petitioner's initial and subsequent statements reflect that two men approached him while he was delivering pizza and one of the men threw a brick through his car window that hit the Petitioner's head. He was treated at the hospital the same night for head trauma with associated neck and back pain, diagnosed with closed head injury without concussion, and prescribed medication for nausea, vomiting, dizziness, and pain. He stated that the two incidents have had a deep effect on him, he has recurring nightmares, and he is unable to sleep and becomes anxious when he thinks about what happened to him. The Petitioner noted that he sought medical help in 2016 and took medications for a short time, but he does not like to take medicine and does not have medical insurance to pay for it.

The medical examination in the record indicates the Petitioner sought medical attention the night of the 2014 incident and reported being hit on the head with a brick. He was diagnosed with closed head injury without concussion and prescribed medication for pain and dizziness. The record also contains a psychiatric evaluation from August 2020 that states the Petitioner suffers from Post Traumatic Stress Disorder as a result of his 2012 and 2014 attacks; he experiences flashbacks, nightmares, and sleeping problems because of the incidents; and he has avoided going out in the evenings or after dark alone.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. Specifically, the Director determined that the Petitioner did not provide sufficient evidence to establish that the crimes listed on the Supplement B, assault in the second degree, robbery, carjacking, malicious destruction – generally and throwing object at vehicle, and motor vehicle theft, are substantially similar to felonious assault.

On appeal, the Petitioner asserts that he was a victim of qualifying criminal activity or, in the alternative, that armed robbery under Maryland law is substantially similar to the qualifying crime of felonious assault. He also contends that he was stalked by the perpetrators during both incidents and stalking, as well as conspiracy to commit stalking and felonious assault, are qualifying criminal activities. The Petitioner argues that the Director based the denial on the 2014 incident, and did not consider the additional incident in 2012. He asserts that even if the Director determined that he was not eligible based on the 2014 incident when a brick was thrown through the window of his car, he established his eligibility based on the 2012 incident because he was carjacked and robbed at gunpoint, which is a felonious assault under Maryland law.

The Petitioner further contends that the Director erroneously found he did not establish that he was the victim of qualifying criminal activity because he did not suffer a serious injury and due to inconsistencies between his personal statement and the police report. He asserts that although there was a discrepancy in the 2014 police report, which mistakenly reported that no injuries occurred during the incident, police reports can be erroneous; that his psychological evaluation shows that his injuries were severe; and that throwing a brick through someone's car while they are sitting in the vehicle is a serious assault and clearly qualifies as a serious crime under 8 C.F.R. § 214.14(a)(9). He also argues that the 2012 crime committed against him was an armed robbery, which qualifies as an aggravated assault under Maryland law and renders him prima facie eligible for U-1 nonimmigrant classification. In support of his arguments, the Petitioner cites a non-precedent decision from this office.[2]

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 his burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. At the outset, in regard to the Applicant's argument that the factual circumstances of the crime demonstrate he was the victim of qualifying criminal activity, evidence describing 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. *See id.* Here, the Petitioner has not established that law enforcement actually detected, investigated, or prosecuted a felonious assault as perpetrated against him.

[2] Regarding the non-precedent decision cited on appeal, we note that because we did not publish the decision as precedent, it does not bind us in future adjudications. *See* 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act").

We acknowledge that Part 3.1 of the Supplement B indicates that the Petitioner was the victim of criminal activity involving or similar to the qualifying crime of felonious assault. However, a certifying official's completion of Part 3.1 is not conclusory evidence that a petitioner is or was the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). In this case, Part 3.3 of the Supplement B lists assault in the second degree, robbery, carjacking, malicious destruction – generally and throwing object at vehicle, and motor vehicle theft, under Md. Code Ann., Crim. Law sections 3-203, 3-402, 3-405, 6-301, 6-302, and 7-105, respectively, as the statutory citations investigated or prosecuted as perpetrated against the Petitioner. None of these crimes constitutes a felonious assault under Maryland or any other qualifying criminal activity. Moreover, the 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 crime of felonious assault 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 Form I-918, Supplement B").

The record indicates that the Petitioner was the victim of robbery, carjacking, malicious destruction, and motor vehicle theft, and suffered an assault pursuant to Md. Code Ann., Crim. Law section 3-203. We note that Md. Code Ann., Crim. Law section 3-203 relates to assault in the second degree and is a misdemeanor, whereas section 3-202 pertains to assault in the first degree and is a felony. Section 3-202 defines assault in the first degree as "intentionally caus[ing] or attempt[ing] to cause serious bodily injury to another" and section 3-201(d) defines "serious bodily injury" as "physical injury that . . . creates a substantial risk of death; or . . . causes permanent or protracted serious . . . (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ." Neither the Supplement B nor the police report cites to or references Md. Code Ann., Crim. Law section 3-202 or any felony-level assault provision under Maryland law as detected, investigated, or prosecuted as perpetrated against the Petitioner or indicates that law enforcement detected or investigated any serious bodily injury or an attempt to cause serious bodily injury during the incidents in question.

Further, the submitted documentation contains inconsistencies regarding the 2012 and 2014 incidents. Concerning the 2012 incident, the Petitioner did not indicate in his initial statement that he was threatened or physically harmed by the individuals. However, he noted in his second statement that five men beat him and threatened to shoot him, he sought medical attention the next day, and he was prescribed medication. Regarding the 2014 incident, though the Petitioner recalled in his personal statement that a brick was thrown through his car window and hit his head, the police report, produced after an officer interviewed the Petitioner, indicates that he was out of the vehicle when the brick was thrown, and no injuries occurred. We note that the Petitioner has not addressed the inconsistencies in the record apart from arguing that police reports can be erroneous. Concerning the Petitioner's claim that he was the victim of stalking and conspiracy to commit stalking and felonious assault, which are qualifying criminal activities, the record similarly does not indicate that law enforcement detected, investigated, or prosecuted these crimes under Maryland law as perpetrated against the Petitioner.

In these proceedings, the Petitioner bears the burden of establishing eligibility, including that he 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, stalking, or conspiracy to commit stalking and felonious assault. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, assault in the second degree, robbery, carjacking, malicious destruction, and motor vehicle theft, under Maryland law, which are not qualifying crimes under the Act.

C. Robbery under Maryland Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

In denying the U petition, the Director determined that robbery is not a qualifying crime and is not substantially similar to felonious assault under Maryland law. On appeal, the Petitioner asserts the Director erred in this determination and argues that the crime of robbery under Md. Code Ann., Crim. Law section 3-403 is 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).

The Act provides that "any similar activity" to the qualifying crimes may also be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. However, the regulations explicitly define the term "any similar activity" as "offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of qualifying criminal activities." 8 C.F.R. § 214.14(a)(9); *see also* Interim Rule, 72 Fed. Reg. at 53018 (providing that the definition of "any similar activity" was needed because, and "base[d] . . . on[,] the fact that the statutory list of criminal activity is not composed of specific statutory violations.").

We first note that although the Petitioner contends that he was the victim of an armed robbery during the 2012 incident, this argument is belied by the record. The police report listed the 2012 incident type as "unarmed robbery" and the Petitioner's initial statement about the incident did not refer to the use of any weapon or any injuries suffered as a result of the robbery and carjacking. Further, while

the Petitioner asserts that the crime of robbery under Md. Code Ann., Crim. Law section 3-403 is substantially similar to the qualifying crime of felonious assault, Part 3.3 of the Supplement B lists robbery under section 3-402, not section 3-403, as the statutory citation investigated or prosecuted as perpetrated against him. Whereas section 3-403 refers to robbery with a dangerous weapon, section 3-402 does not refer to the use of a weapon.

Maryland law defines assault as "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." Md. Code Ann., Crim. Law § 3-201. Under Maryland law, assault has been judicially determined to mean: (1) an attempt to commit a battery or (2) an unlawful intentional act which places another in reasonable apprehension of receiving an immediate battery. *Snyder v. State*, 63 A.3d 128, 134 (Md. Ct. Spec. App. 2013). (citation omitted). For an assault to be classified as a felony, *inter alia*, an individual must intentionally cause or attempt to cause serious bodily injury to another. Md. Code Ann., Crim. Law § 3-202. At the time of the incident, Maryland law defined robbery, in pertinent part as "intent to withhold property of another . . . (i) permanently; (ii) for a period that results in the appropriation of a part of the property's value; (iii) with the purpose to restore it only on payment of a reward or other compensation; or (iv) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it." Md. Code Ann., Crim. Law § 3-401. While section 3-402 states that any "person who violates this section is guilty of a felony," it does not require the use of a dangerous weapon, in contrast to section 3-403.

We acknowledge that robbery under Md. Code Ann., Crim. Law section 3-402 is a felony offense. However, robbery under Maryland law is otherwise distinct in its elements from Maryland's equivalent to the qualifying crime of felonious assault. Robbery requires withholding property as an element of the offense, which is not required under Maryland's felonious assault provision. Also unlike the felonious assault provision, robbery does not require an individual to intentionally cause or attempt to cause serious bodily injury to another. Based on the foregoing, the Petitioner has not established the nature and elements of robbery are substantially similar to a felonious assault in Maryland and has not demonstrated that he was a victim of any qualifying crime or "any similar activity" to the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

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 he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.