U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16249615

Date: FEB. 9, 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 evidence presented did not establish that the Applicant was a victim of qualifying criminal activity under the Act. On appeal, the Petitioner submits a brief and indicates that he was a victim of robbery by assault, which is substantially similar to felonious assault, a qualifying crime.

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.

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), which 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. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want

USCIS to consider to establish that they are a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii)-(iii).

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). 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

The Petitioner filed the instant U petition in September 2015 with a Supplement B certified by the Supervising Assistant State's Attorney for Connecticut's State Attorney Office. In Part 3.1 of the Supplement B, for criminal acts, the certifying official checked the box for felonious assault and other "robbery." In Part 3.3, when prompted to provide the specific statutory citation investigated or prosecuted, the certifying official did not cite to any provision of the Connecticut Penal Code, but wrote, "robbery in the 2 degree- conspiracy." The description of the criminal activity being investigated at Part 3.5 indicates that the Petitioner was "assaul[t]ed and robbed." Part 3.6, which asks for a description of any known or documented injuries to the victim, states the Petitioner was "assaul[t]ed and robbed of wallet, cell phone, money, and damage clothing." The police report details how the Petitioner stated that the suspect "pushed into his vehicle, ripped open his pocket, and took his cell phone, and $400.00 in cash...." The police report identified the crimes involved as robbery/possession with intent to sell but did not provide statutory citations for either crime. However, the criminal disposition from the perpetrators' convictions show they were convicted of conspiracy to commit robbery in the second degree under section 53a-135 of the Connecticut General Statutes Annotated (C.G.S.A.).

The Director issued a request for evidence, seeking additional documentation to establish the statutory citation(s) for the criminal activity that was investigated and prosecuted and documentation that the criminal activity listed on the Supplement B is qualifying criminal activity that is specifically listed in the regulations. In response to the RFE, the Petitioner submitted previously presented documentation as well as evidence of attempts to contact the certifying official for clarification on the criminal activity.

After review, the Director denied the petition stating that although the certifying official indicated that the Petitioner was the victim of robbery, no statutory citation was listed on the Supplement B, the police report, or the criminal case details for the perpetrators of the crime. In addition, the Director then indicated that no evidence was presented to establish the Petitioner was a victim of felonious assault. The Director concluded that the Petitioner did not establish he was the victim of qualifying criminal activity and denied the petition accordingly.

A. 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 . . ..").

We agree with the Director that the record does not show that *felonious assault* was detected, investigated, or prosecuted. We acknowledge that 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). 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 law enforcement actually detected, investigated, or prosecuted a qualifying crime as perpetrated against a petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5). However, the Supplement B, when read as a whole and in conjunction with other evidence in the record, as well as Connecticut law, 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).

Under section 53a-61 of the C.G.S.A., misdemeanor assault is defined as intentionally or recklessly causing physical injury to another or, with criminal negligence, causing physical injury to another by means of a deadly weapon, a dangerous instrument, or an electronic defense weapon. Section 53a-59 and section 53a-60 of the C.G.S.A. describe the circumstances rising to felony level assault which involves such aggravating factors as serious physical injury by means of a deadly weapon or dangerous instrument; intentionally and permanently disfiguring or disabling another; and recklessly creating a grave risk of death to another and thereby causing serious physical injury; as well as assaults to people who are members of certain protected groups.

Beyond the checked box, the certifying official did not reference or describe the crime of felonious assault as perpetrated against the Petitioner elsewhere in the Supplement B. In Part 3.3, assault or felonious assault was not cited as having been investigated or prosecuted. In addition, although the descriptions of the criminal activity being investigated and injuries suffered in Part 3.5 and 3.6 of the Supplement B mention assault, they do not indicate this assault rose to the level of felonious assault-involving serious injury by means of a deadly weapon or any of the other aggravating factors mentioned above. Furthermore, the police report does not indicate that felonious assault was detected,

investigated, or prosecuted. The report details how the Petitioner stated that the suspect, "pushed into his vehicle, ripped open his pocket, and took his cell phone, and $400.00 in cash," identifying the crimes involved as robbery/possession with intent to sell. Finally, conviction documents show that the perpetrators were convicted of conspiracy to commit robbery in the second degree under section 53a-135 of the C.G.S.A., not felony level assault. As a result, the checked box in the Supplement B is inconsistent with the information outlined in the remainder of the document, within the police report, within the conviction documents, and as reflected in Connecticut law- which all served as the basis for the certification of the Supplement B.

In sum, the Supplement B, the police report, and the criminal dispositions do not cite to or reference any felony-level assault provision under Connecticut law as detected, investigated, or prosecuted as perpetrated against the Petitioner. As such, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, the crime of robbery.

B. The Model Penal Code Definition of Aggravated Assault is not Controlling Regarding Whether Robbery Under Connecticut Law is Substantially Similar to the Qualifying Crime of Felonious Assault

The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, but the statute also encompasses "any similar activity" to the enumerated crimes. The regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Petitioners may show their crime is substantially similar to an enumerated crime 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.

The Petitioner contends that robbery under the Connecticut Penal Code is a qualifying crime because it is substantially similar to the enumerated crime of felonious assault. To make this determination, we must compare the nature and elements of robbery under Connecticut law, the crime investigated, with felonious assault, the qualifying crime. The U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a "felonious assault" must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "felonious assault" when committed "in violation of Federal, State or local criminal law" as a qualifying criminal activity); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner).

On appeal, the Petitioner cites to the Model Penal Code (MPC) definition of aggravated assault as a proper definition of felonious assault for comparison in this case; asserting that because both robbery in Connecticut and aggravated assault under the MPC involve causing bodily injury they are substantially similar.

However, 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)(l) 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 Supervising Assistant State's Attorney for Connecticut's State Attorney Office, enforces Connecticut 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 felonious assault statutes in Connecticut exist (section 53a-59 and section 53a-60 of the C.G.S.A as described above) 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).

Section 53a-59 and section 53a-60 of the C.G.S.A. provides the appropriate comparison to the qualifying criminal activity of felonious assault, and the Petitioner does not engage in an analysis and comparison of the Connecticut felony assault statute and the Connecticut 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. 369, 376 (AAO 2010). Here, he has not met that burden. Thus, we find the Applicant has not established that the certified crime of robbery is substantially similar to felonious assault. Nor has the Petitioner shown that law enforcement detected, investigated, or prosecuted a qualifying crime perpetrated against him. As such, he necessarily cannot satisfy the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

ORDER: The appeal is dismissed.