U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19522115

Date: FEB. 15, 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 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. The matter is now before us on appeal.

On appeal, the Petitioner submits a brief asserting that she was the victim of qualifying criminal activity, that she suffered substantial mental and physical abuse and that she 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, 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 her U petition in January 2016 based upon a motor vehicle accident in which she was injured and where the motor vehicle operator causing the accident was driving while intoxicated. With her U petitioner she submitted a Supplement B signed and certified by the chief of the [redacted] Police Department in [redacted] Wisconsin (certifying official). The certifying official checked boxes indicating that the Petitioner was a victim of criminal activity involving or similar to "Felonious Assault," and "Other:" and identified sections 346.63(2)(a)1 (felony operating while intoxicated causing injury); 346.63(2)(a)2, (felony operating with prohibited alcohol concentration causing injury) and 346.63(1)(b) (misdemeanor operating with prohibited alcohol concentration) of the Wisconsin Statutes (Wis. Stat.) as the statutory citations for the criminal activity being investigated or prosecuted. A motor vehicle accident report in the record indicated that three citations were issued at the time of the accident for violations of sections 346.63(2)(a)(1), 346.63(1)(b), and 346.57(2) of the Wis. Stat.[2] This report described the damage to the Petitioner's vehicle as "very severe," indicated that there was a fire, and that the Petitioner suffered an "incapacitating injury." On the Supplement B, the certifying official, when asked to describe any known or documented injury to the Petitioner, stated that she "lost consciousness after the crash, suffered a facial laceration, a scalp hematoma and chest and neck pain," and that she "was transported for medical care." The record includes copies of the Petitioner's medical records corroborating the certifying official's description of her injuries. The Petitioner also submitted a statement containing a narrative consistent with the details in the Supplement B and motor vehicle accident report. Finally, sentencing documentation in the record shows that the motor vehicle operator was charged, in relevant part, with two counts of felony operating while intoxicated causing injury – 2nd and subsequent offense in violation of sections 346.63(2)(a)1 and 346.65(3p)[3] of the Wis. Stat.; two counts of felony operating with prohibited alcohol concentration causing injury – 2nd and subsequent offense in violation of sections 346.63(2)(a)2 and 346.65(3p) of the Wis. Stat.; and two counts of misdemeanor operating with prohibited alcohol concentration - 2nd offense in violation of sections 346.63(1)(b) and 346.65(2)(am) of the Wis. Stat.[4]

---

[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] Section 346.57(2) of the Wis. Stat. relates to the operation of a vehicle at "a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing." (West 2011).

[3] Section 346.65(3p) provides the definitions for subsequent offenses under Wisconsin law.

B. The Petitioner Was Not a Victim of Qualifying Criminal Activity

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* (U Interim Rule), 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 . . . .").

The Petitioner argues on appeal that she was a victim of Aggravated Battery, as defined at section 940.19 of the Wis. Stat. She notes that Wisconsin does not have a felonious assault statute and that in Wisconsin, Aggravated Battery can be considered the statutory equivalent to Felonious Assault. We agree. In addition, we acknowledge that Part 3.1 of the Supplement B submitted with the Petitioner's U petition indicates that she was the victim of criminal activity involving or similar to the qualifying crime of felonious assault. However, the Supplement B does not list section 940.19 of the Wis. Stat. as one of the statutory citations investigated or prosecuted as perpetrated against her. Similarly, as the Petitioner acknowledges on appeal, the motor vehicle report, criminal complaint, and the conviction documents in the record do not list section 940.19 of the Wis. Stat. as a statute detected, investigated, or prosecuted against her. The record, therefore, does not show by a preponderance of the evidence that the qualifying criminal activity of felonious assault, or any criminal activity substantially similar to felonious assault, was actually detected, investigated, or prosecuted as perpetrated against her.

The Petitioner contends on appeal that she was a victim of felonious assault because the facts of the criminal activity show her to have been a victim of Aggravated Battery. Through counsel, the Petitioner asserts that felonious assault is defined as "a criminal assault that is classified as a felony and involves the use a deadly weapon," and that the facts of the criminal activity show her to be a victim of Aggravated Battery, as defined at section 940.19(6) of the Wis. Stat., involving the use of a deadly weapon.[5] The Petitioner contends in her case the automobile constitutes a deadly weapon and notes that in upholding *State v. Bidwell* 200 Wis.3d 200, 546 N.W.3d 407 (Wis. Ct. App. 1996), the Wisconsin Court of Appeals found that "an automobile may constitute a dangerous weapon under § 939.22(10)." However, in *Bidwell,* the Wisconsin Court of Appeals found that an automobile may constitute a dangerous weapon "where the evidence exists to charge a defendant with a dangerous weapon penalty enhancer and the circumstances are egregious." The Petitioner has not shown how this is applicable, or demonstrated that evidence existed in the instant case to charge her perpetrators with a dangerous weapon penalty enhancer and that the circumstances of her case were egregious.

[5] Wis. Stat. § 940.19(6) provides in relevant part that "Whoever intentionally causes bodily harm to another by conduct that creates a substantial risk of great bodily harm is guilty of a Class H felony."

Moreover, as discussed above, and as the Petitioner acknowledges on appeal, "the crimes listed in the police report, criminal complaint, and conviction documents are not listed as Felonious Assault or Aggravated Battery," and there is no other evidence in the record establishing that law enforcement actually detected, investigated, or prosecuted Aggravated Battery in her case. We acknowledge the Petitioner's argument on appeal that the facts of the case satisfy the three elements of the Aggravated Battery statute in Wisconsin. However, 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 the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5).

As we discuss above, the record demonstrates that the Petitioner was a victim of criminal activity in violation of sections 346.63(2)(a)(1) and 346.63(1)(b) of the Wis. Stat., both of which relate to injury caused by an opposing motor vehicle operator who was driving drunk, and not a victim of Felonious Assault. Accordingly, the Petitioner has not shown on appeal that she was a victim of qualifying criminal activity.

C. The Remaining Criteria for U-1 Classification

The U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the Petitioner was the victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I)-(IV) of the Act. The Petitioner argues on appeal that the record evidence establishes that she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. However, as she has not established that she was a victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated that, as required, she was a victim of qualifying criminal activity. The Petitioner therefore cannot satisfy the eligibility criteria for U nonimmigrant status in 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.