U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15842480

Date: FEB. 15, 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. 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.

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 the 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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions and the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 &N Dec. 369, 375 AAO 2010). As a part of meeting this burden, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8

C.F.R. § 214.14(c)(2)(i). The petitioner 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)(i)-(iii). Although a petitioner may submit any relevant, credible evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in October 2015 stemming from criminal activity that occurred in [redacted] 2010. With the U petition and in response to the Director's request for evidence (RFE), the Petitioner submitted two forms Supplement B, a crime report, court documents, personal statements, a psychological evaluation, and letters of support.

An initial Supplement B, certified by the Office of the [redacted] Illinois, State's Attorney and signed in December 2014, does not identify criminal activity at Part 3, but lists the statutory citation for the criminal activity investigated or prosecuted as 720-5/18-3(a), which corresponds to vehicular hijacking under the Illinois Compiled Statutes (ILCS). The Supplement B does not include a description of the criminal activity being investigated or prosecuted, any injuries to the victim, or the victim's helpfulness. A second Supplement B, signed in August 2020 by another individual also in the [redacted] State's Attorney office and submitted in response to the Director's RFE, identifies the investigated criminal activity at Part 3 as felonious assault and provides the citation for the criminal activity being investigated or prosecuted as 720 ILCS 5/18-3(a), corresponding to vehicular hijacking.

A certified court document of conviction shows the offenders charged under 720 ICLS 5/18-3(a) for vehicular hijacking and 720 ICLS 5/18-2(a)(1) for armed robbery/no firearm. Charging documents show one of the offenders charged in the Circuit Court of [redacted], Illinois, with aggravated vehicular hijacking in violation of 720 ICLS 5/18-4(a)(3) with the second offender charged with armed robbery in violation of 720 ICLS 5/18-2(a).

On the second Supplement B the certifying official described the criminal activity as offenders approaching the victim to inquire about him selling his car and asking to see the title, and then while driving one of them choked him and put a knife to his neck, threatened him to sign over the title, demanded his wallet and cell phone, and pushed him out of the car. The certifying official described the Petitioner as cooperating with law enforcement. Where the Supplement B provides for a description of injuries to the victim the certifying official indicted "Not available."

Crime reports from the [redacted] Illinois, Police Department accompanying the Supplement B provide the Petitioner's account, identified the offense as aggravated vehicular hijacking and armed robbery using a knife/cutting instrument. Follow up reports also indicated aggravated vehicular hijacking and armed robbery as the offense details, include accounts as provided by the Petitioner, and identify stolen items. Narratives in the crime reports indicate that the Petitioner reported two offenders knocked on his door to inquire about selling his car, he described the offenders as wearing black

hoodies but no gloves and recounted that while driving the car one of them put a knife to his neck, demanded his wallet and cell phone, threatened his family, and let him out of the car.

In denying the U petition, the Director found that the record did not show the Petitioner was the victim of a qualifying crime or of a crime substantially similar to those listed in regulation. The Director referred to the submitted evidence and determined that the record established the detected or investigated crime was vehicular hijacking, which is not qualifying criminal activity, and that the record did not support that the Petitioner was victim of felonious assault. The Director noted that aggravated battery under 720 ILCS 5/12-3.05 (formerly 5/12-4) includes as an element the infliction of great bodily harm, and that in *People v Costello,* 95 Ill. App. 3d 680 (1981) the appellate court defined great bodily harm as more serious or grave than bodily harm. The Director surmised that there was no evidence that felonious assault was detected or investigated, that the certifying official did not explain why the citation for vehicular hijacking was cited rather than felonious assault, and that evidence shows the Petitioner was victim of vehicular hijacking where the essential elements of the crime do not rise to the level of a qualifying crime. The Director further concluded that because the Petitioner did not show that he was victim of qualifying criminal activity the remaining requirements for U nonimmigrant status could not be met.

The issue before us is whether the Petitioner was the victim of qualifying criminal activity. On appeal, the Petitioner argues that he was the victim of felonious assault and that the Director erred by examining the state statute for aggravated battery rather than felony aggravated assault and by finding no evidence that the certifying agency detected felonious assault against him. Upon review, we agree with the Director that the Petitioner has not established by a preponderance of the evidence that he was the victim of qualifying criminal activity.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crime of Felonious Assault 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 acknowledge that Part 3 of the second Supplement B indicates that the Petitioner was the victim of felonious assault, however it was certified more than 10 years after the crime occurred and nearly six years after the original Supplement B was signed, and without an accompanying statement from the certifying official or any other evidence explaining the reasons behind the "Felonious Assault"

checked box. The Supplement B read in conjunction with other evidence in the record does not establish by a preponderance of the evidence that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. Section 214(p)(4) of the Act (stating that, in acting on petitions for U nonimmigrant status, the agency "shall consider any credible evidence relevant to the petition"); 8 C.F.R. § 214.14(c)(4) (stating 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"). In addition to the citation for vehicular hijacking provided on both forms Supplement B, crime reports at the time identified the offense as aggravated vehicular hijacking and armed robbery while court documents show the offenders charged with vehicular hijacking and armed robbery. None of these documents indicate that the qualifying crime of felonious assault was detected, investigated, or prosecuted.

On appeal, the Petitioner contends that the Director incorrectly focused on great bodily harm whereas he was the victim of aggravated assault since he feared for his life and was choked by offenders who were wearing black hoodies and gloves to conceal themselves. The Petitioner asserts that battery happens when a victim suffers bodily harm, but the common law definition of assault includes placing one in fear of imminent harm. He concedes that he did not suffer great bodily harm but maintains that he feared for his life as he was assaulted by two men in hoodies and gloves who threatened him with a dangerous weapon - a knife[1] – and choked him before pushing him out of a vehicle. The Petitioner surmises that the Director focused narrowly on aggravated battery rather than the elements of aggravated assault and should have reviewed the narrative of the Supplement B, police report, and other evidence to determine that felonious assault occurred.

Illinois law at the time of the criminal activity against the Petitioner provided:

> 720 ILCS 5/12-2 Aggravated assault
> (a) A person commits an aggravated assault, when, in committing an assault, he:
> (1) Uses a deadly weapon,
> (2) Is hooded, robed or masked in such manner as to conceal his identity or any device manufactured and designed to be substantially similar in appearance to a firearm,
> (3) Knows the individual assaulted to be a teacher or other person employed in any school and such teacher or other employee is upon the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes;
> (4) Knows the individual assaulted to be a supervisor, director, instructor or other person employed in any park district and such supervisor, director, instructor or other employee is upon the grounds of the park or grounds adjacent thereto, or is in any part of a building used for park purposes;
> (5) Knows the individual assaulted to be a caseworker, investigator, or other person employed by the Department of Healthcare and Family Services (formerly State Department of Public Aid), a County Department of Public Aid, or the Department of Human Services (acting as successor to the Illinois Department of Public Aid under the Department of Human Services Act [FN1]) and such caseworker, investigator, or other person is upon the grounds of a public aid office or grounds adjacent thereto, or is in

[1] 720 ILCS 5/24-1 knife, which Illinois statutes include in a list of deadly weapons,

> any part of a building used for public aid purposes, or upon the grounds of a home of a public aid applicant, recipient or any other person being interviewed or investigated in the employees' discharge of his duties, or on grounds adjacent thereto, or is in any part of a building in which the applicant, recipient, or other such person resides or is located;

720 ILCS 5/12-2 (West 2022)

The statute includes 19 paragraphs defining aggravated assault. The Petitioner highlights that he was threatened by men with a knife, wearing hoods, and who threw him from the vehicle. However, the aggravated assault statute provides that aggravated assault as defined in paragraphs (1) through (5) of subsection (a) of this section, which include use of a deadly weapon and being hooded, is a Class A misdemeanor. The remaining paragraphs define when aggravated assault becomes a felony, identifying the use of a firearm or assault on particular classes of individuals known by the person to be, for example, school employees, peace officers, handicapped, over 60 years of age, or certain public employees.

In the context of sentencing enhancement, the U.S. Court of Appeals for the Seventh Circuit determined that a district judge had erred finding the crime of aggravated assault under Illinois law was a felony when in fact aggravated assault under Illinois law was a Class A misdemeanor. *U.S. v. Bennett*, 461 F.3d 910 (7th Cir. 2006). The court concluded that aggravated assault in Illinois is only a Class A misdemeanor with a possible term of imprisonment that is less than one year.

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, and USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). In this case, the Petitioner has not established by the preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against him.

C. Vehicular Hijacking and Armed Robbery are Not Substantially Similar to the Qualifying Crime of Felonious Assault

The crimes of vehicular hijacking and armed robbery are not specifically listed as qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act, therefore the Petitioner must establish that the nature and elements are substantially similar to a statutorily enumerated criminal activity. 8 C.F.R. § 214.14(a)(9). 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).

1. Vehicular Hijacking

The Petitioner argues that the aggravated battery statute is inapplicable and that the Director failed to examine the elements of aggravated assault with the elements of vehicular hijacking to determine whether it rose to the level of felonious assault. The Petitioner contends that the Director incorrectly focused on great bodily harm whereas he was the victim of aggravated assault since he feared for his life and was choked by offenders who were wearing black hoodies and gloves to conceal themselves.

At the time of the criminal activity, the Illinois statute provided the following, in pertinent parts:

> 720 ILCS 5/18-3 Vehicular hijacking
>
> (a) A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.
>
> (c) Sentence. Vehicular hijacking is a Class 1 felony.

720 ILCS 5/18-3 (West 2022)

For vehicular hijacking a person must take a motor vehicle by use of force or threatened imminent use of force, whereas for aggravated assault the person commits an assault, which section 720 ILCS 12-1 defines as conduct placing another in reasonable apprehension of receiving a battery. Assault threatens battery while vehicle hijacking involves use of force. Elements of aggravated assault under 720 ILCS 5/12-2 include use of a weapon, firearm, concealment, or assault on particular classes of individuals, which are not elements of vehicular hijacking. Comparing elements of vehicular hijacking with aggravated assault shows that vehicular hijacking does not require an assault, but rather the threat of use of force. Moreover, for an aggravated assault to rise to the level of a felony requires use of a firearm or assault on classes of individuals performing duties, none of which are elements of vehicular hijacking.

2. Armed Robbery

Although armed robbery is not referenced on either Supplement B, the crime reports and charging documents identify the crime of armed robbery as also perpetrated against the Petitioner. At the time of the criminal activity against the Petitioner, Illinois law provided:

> 720 ILCS 5/18-1 Robbery
>
> (a) A person commits robbery when he or she takes property, except a motor vehicle covered by Section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force.

720 ILCS 5/18-2(A) Armed robbery

(a) A person commits armed robbery when he or she violates Section 18-1; and

(1) he or she carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm; or

(2) he or she carries on or about his or her person or is otherwise armed with a firearm; or

(3) he or she, during the commission of the offense, personally discharges a firearm; or

(4) he or she, during the commission of the offense, personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another

An element of robbery under the Illinois statute is the taking of property by force or threatened use of force while armed robbery includes use of a dangerous weapon. The record shows the offenders used a knife, which the Illinois statutes include in listing dangerous weapons. However, as noted above, assault requires the reasonable apprehension of receiving battery, or bodily harm, which armed robbery does not. Illinois appellate courts have also determined the elements of assault and armed robbery are not similar. In *People v. Robinson*, 68 Ill. App. 3d 687, 691 (Ill. 1979) the court noted that conviction for aggravated assault required proof of reasonable apprehension of battery that armed robbery did not. And in *People v. Evans*, 87 Ill. App. 3d 714, 717 (Ill. 1980) the court noted that a person can commit a robbery by force without the victim perceiving the threat of force.

Based on the foregoing, the Petitioner has not established the nature and elements of vehicular hijacking or armed robbery are substantially similar to felonious assault in Illinois and therefore has not demonstrated that he was a victim of any qualifying crime 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 remaining criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.