U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17227046

Date: FEB. 24, 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. Moreover, the Director stated that, absent evidence the Petitioner was the victim of qualifying criminal activity, she also could not meet the remaining eligibility requirements.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. She asserts that she was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office (AAO) 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 remand the matter to the Director for issuance of a new decision.

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). Certifying official is defined in pertinent part as "[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency." 8 C.F.R. § 214.14(a)(3)(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

The Petitioner filed her U petition in September 2015 with a Supplement B signed and certified by the Chief Prosecuting Attorney of the [redacted] Washington Police Department. The Supplement B checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to the qualifying crime of felonious assault. When asked to provide the specific statutory citations investigated or prosecuted, the certifying official listed Wash. Rev. Code §§ 9A.36.021 and 9A.56.200, assault in the second degree and robbery in the first degree, respectively. With respect to a requested description of the criminal activity being investigated or prosecuted, the Supplement B provided the following:

> [The Petitioner] was the victim of felonious assault on [redacted] 2008 when she was assaulted by a stranger. [The Petitioner] was walking across the Bank of America parking lot to deposit money when an unknown male tried to grab the deposit bag from her. He then pushed [the Petitioner] twice in the chest, stole the money from her, and fled.

The Supplement B repeated that the Petitioner "was pushed twice in the chest," adding that she "suffered substantial psychological harm," "feared for her life [and] completely lost her sense of security."

The [redacted] Police Department incident report (police report) accompanying the Supplement B identified the incident as a robbery that occurred on [redacted] 2008, and further described it as "robbery – strong arm C." The police report listed the Petitioner as one of two victims and stated that the means of attack on her was "hands, feet and fists."[2]

---

[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] The other listed victim of the robbery was her employer, a fast food chain restaurant.

According to the police report, the Petitioner described the following: she had parked in a bank parking lot and was walking through the lot with her employer's bank drop bag containing nearly $3,000 in cash. She said that as she approached the bank, a man tried to grab the bank drop bag and stated, "give it to me." The Petitioner told police that she screamed for help, and that the man then pushed her twice in the chest and was able to grab hold of the bank drop bag after the second push. She confirmed to the police officer that the robber had not displayed or threatened her with a weapon, and she had not fallen to the ground when he pushed her. According to the police report, a witness stated that she saw the robber, locked herself in her car, then saw him engaged in a struggle with the Petitioner. The witness stated that the robber pushed the Petitioner against the witness' own car and eventually took possession of the bank drop bag that the Petitioner was holding. The remainder of the incident report discusses the suspect's appearance and the details of the police officer's interviews with the bank employees; but it does not include more information about the Petitioner's interaction with the robber.

The Director denied the U petition, concluding that the Petitioner was not the victim of a qualifying criminal activity because the essential elements of the crime to which she had been subjected were not substantially similar to felonious assault. Specifically, the Director stated that the elements of the robbery and assault statutes are not substantially similar to felonious assault because the statutory language requires that the perpetrator "[i]nflicts bodily injury," be "armed with a deadly weapon," and "inflicts substantial bodily harm" whereas the Director concluded that the Petitioner did not provide evidence to show that she suffered bodily injury. The Director also concluded that the Petitioner did not provide additional documents to establish that the essential elements of the crime are substantially similar to felonious assault.

On appeal, the Petitioner asserts that she was the victim of the crime of robbery in the first degree because the perpetrator assaulted her, causing bodily harm, with the intent to commit a felony. In the alternative, the Petitioner contends that the crime to which she was subjected clearly qualifies because it was assault in the second degree with the intent to commit the felony of robbery in the second degree. The Petitioner contends that the information in the police report shows that she was the victim of robbery involving physical assault on her, that she was injured, and that such criminal activity falls under the definition of assault in the second degree, and that the criminal activity described in the police report and certified on the Supplement B is substantially similar to felonious assault, one of the crimes enumerated at section 101(a)(15)(U)(iii) of the Act.

After a review of the entire record, we agree with the Petitioner that her case presents 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 . . . .").

In addition to the definitions for assault in the second degree that the Director cited, under Washington State law a person also is guilty of assault in the second degree if the person, "[w]ith intent to commit a felony, assaults another . . . ." Wash. Rev. Code § 9A.36.021(1)(e). Therefore, for law enforcement to detect, investigate, or prosecute a second-degree assault in Washington state, the perpetrator must: (1) intend to commit a felony under the revised code of Washington, (2) while also committing an assault.

The Petitioner claims that her assailant's underlying intent was to commit the felony offense of robbery in the first degree. Under Wash. Rev. Code § 9A.56.200(a)(1), an individual is guilty of robbery in the first degree if during the robbery, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury; or

(iv) He or she commits a robbery within and against a financial institution.

With respect to the specific robbery statute that was detected, investigated, or prosecuted, the certifying official stated on the Supplement B that the intended theft of the drop bag constituted robbery in the first degree under Wash. Rev. Code § 9A.56.200.[3] The police report reflects that the intent of the Petitioners' assailant was to rob her of the bag because he first tried to take the bag, then ordered her to give it to him, and subsequently ceased to push the Petitioner once he had possession of the drop bag. Therefore, the record shows that the assailant's intent was to commit a robbery.

On appeal, the Petitioner claims that she suffered from bodily injuries as a result of the robbery. The police report indicates that the Petitioner was pushed twice in the chest, and that the assault on her was committed with her assailant's hands, feet, and fists. Even if, as the Director concluded, the Petitioner did not show that she suffered bodily injury for purposes of showing she was the victim of first-degree robbery, a lesser offense of second-degree robbery in Washington State does not require that the Petitioner show she was injured and is still a felony offense.[4] Consequently, the record reflects that law enforcement detected, investigated, or prosecuted first-degree or second-degree robbery, either of which is a felony.

---

[3] Robbery in the first degree is a class A felony. Wash. Rev. Code § 9A.56.200(2).

[4] A person is guilty of second-degree robbery if he or she commits robbery. Wash. Rev. Code § 9A.56.210(1). Robbery in the second degree is a class B felony. Wash. Rev. Code § 9A.56.210(2).

With respect to the second-degree assault claim, in Washington state, '[a]ssault is an intentional touching or striking of another person that is harmful or offensive, regardless of whether it results in physical injury.' " *State v. Jarvis,* 246 P.3d 1280 (Wash. 2011) (quoting *State v. Tyler,* 155 P.3d 1002 (Wash. 2007)). An intent to commit any felony combined with an act that also constitutes an assault is a violation of Washington's second-degree assault provision.

In this case, the police report described the Petitioner's struggle with the robber based on her own statement to the police and the statement of a nearby witness, who affirmed that she watched the struggle and specified that the assailant pushed the Petitioner into the witness' car. In addition, the Supplement B identified the crime as felonious assault and referenced the assault twice - first when the certifying official described how the Petitioner was struck twice in the chest, and again when the certifying official described the Petitioner's injuries. As it reflects the Applicant experienced intentional touching that was harmful or offensive, and the assailant's underlying intent was a felony offense, the Supplement B specifies that law enforcement detected, investigated, or prosecuted assault in the second degree.

Second-degree assault is a class B felony. Wash. Rev. Code § 9A.36.021(2)(a). Therefore, assault in the second degree under Wash. Rev. Code § 9A.36.021(1)(e), a felony, is Washington State's statutory equivalent of felonious assault, an enumerated crime under section 101(a)(15)(U)(iii) of the Act. As a consequence, the Petitioner has demonstrated qualifying criminal activity and we withdraw the Director's finding to the contrary.

Because the Director determined that the Petitioner had not established qualifying criminal activity, she did not reach the merits of the Petitioner's eligibility under the remaining criteria, including whether the Petitioner established that she suffered substantial physical or mental abuse as a result of the crime. We therefore remand the matter to the Director to determine the Petitioner's eligibility under the other requirements for U-1 nonimmigrant status.

ORDER: The matter is remanded to the Director for further proceedings consistent with this opinion and for the entry of a new decision.