U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22198559

Date: JULY 22, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity 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), and a subsequent motion to reopen and reconsider. The matter is now before us on appeal. 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. "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, including felonious assault, 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 regulation at 8 C.F.R. § 214.14(a)(14) defines a "victim of qualifying criminal activity" as an individual who has suffered direct and proximate harm as a result of the crime. Parents and unmarried siblings under the age of 18 of a direct victim, who was under 21 years of age at the time the qualifying criminal activity occurred, will also be considered victims if the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and is unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i).

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). The burden of proof is on a petitioner

[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.

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). Although petitioners may submit any relevant, credible evidence for the agency to consider, U.S. Citizenship and Immigration Services (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 a U petition in January of 2016. According to his sworn declaration, in [redacted] of 2014, he received a frantic telephone call from his older son informing him that his younger son (who was twelve years old at the time), had been hit by a car and taken to the hospital. The Petitioner stated that he was told his son (the victim) had been putting equipment into the trunk of a car when another driver hit the parked car behind him, causing his legs to become "smashed" between the two cars. The victim reportedly begged the driver of the vehicle to call the police, but instead, the driver tried to run away from the scene of the accident and was subsequently arrested. The Petitioner described arriving at the hospital and seeing his son in excruciating pain. The Petitioner stated that his son remained in the hospital for about a month and a half, undergoing various surgeries. He explained that his son was most affected emotionally and academically, and had to repeat the eighth grade. The Petitioner further explained that they decided to transfer him to a military school because they felt it was best for his academic and athletic success. The Petitioner maintained that they are highly considering placing their son in counseling to deal with his emotional issues. The Petitioner stated that he is the sole breadwinner for his family, that he takes his son to every medical appointment, and that his son needs him to provide for him financially and emotionally.

A police report submitted with the petition indicated that the Petitioner's son was the victim of a felony DUI (driving under the influence). The Supplement B submitted with the petition stated that the victim was seriously injured when he was struck by a drunk driver. When asked what criminal activity was involved, the certifying official checked the box for "Felonious Assault," and identified the specific statutory citation(s) investigated or prosecuted as "23153(A) vc Felony DUI."

The Director issued a request for evidence (RFE), seeking, in part, additional information that the crime listed in the Supplement B is a qualifying crime under the Act. The Director specified that California Vehicle Code § 23153(a) is not among those crimes specifically listed in the regulation, nor does the evidence provided sufficiently show that the criminal activity is substantially similar to any of the crimes listed in the regulation. The Director requested additional documentation, not previously submitted, to demonstrate that the crime constitutes qualifying criminal activity under the Act.

The Petitioner responded to the RFE with new evidence, including, but not limited to, court documents and a copy of California Penal Code § 12022.7 for sentence enhancements.[2] The Petitioner argued that the nature and elements of California Vehicle Code § 23153(a) (DUI) are substantially similar to California Penal Code § 245(a) (felonious assault). According to the Petitioner, felony DUI involves driving under the influence *and* the commission of an act by the defendant that caused the victim's

[2] The subtitle for California Penal Code § 12022.7 is "Terms of imprisonment for persons inflicting great bodily injury while committing or attempting felony."

injuries. He argued that both statutes criminalize an act that would directly cause bodily injury to a person and both statutes are general intent crimes. In addition, the Petitioner stated that the perpetrator in this case received a sentence enhancement under California Penal Code § 12022.7 for causing great bodily injury to the victim. Furthermore, the Petitioner maintained that the perpetrator was also charged and convicted of felonious hit and run under California Penal Code § 20001, and noted that California also penalizes vehicular manslaughter under California Penal Code § 191.5(a). According to the Petitioner, the perpetrator drove with such gross negligence that he could have killed the victim. The Petitioner contends that the hit and run, the reckless driving, and the felonious driving under the influence causing injury should lead USCIS to conclude that the police investigated crimes with similar elements contained in the felonious assault statute.

The Director denied the U petition, finding that the Supplement B did not show that the crimes of felonious assault or vehicular manslaughter under California Penal Code § 245(a) and California Penal Code § 191.5(a), respectively, were ever investigated or prosecuted, and that felony DUI under California Vehicle Code § 23153(a) is not substantially similar to California's felonious assault statute. In addition, the Director further found that although USCIS is sympathetic to the substantial harm suffered by the Petitioner's son, "this decision is based upon an assessment to determine whether the evidentiary burden has been met by you the petitioner. The evidence as presented does not establish you have been an indirect victim of a qualifying criminal activity . . . ."

The Petitioner filed a motion to reopen and reconsider the Director's denial decision. The Petitioner claimed that the Director denied his U petition based on his previous Supplement B which listed only California Vehicle Code § 23153(a) as the qualifying crime investigated. The Petitioner submitted a newly executed Supplement B, identifying the statutory citations for the criminal activity investigated or prosecuted as: California Penal Code § 12022.7 (sentence enhancements), California Vehicle Code § 23153(a) and (b) (DUI), California Health and Safety Code § 11350(a) (possession of designated controlled substances), and California Vehicle Code § 20001(a) (duty to stop at scene of injury accident). According to the Petitioner, the crimes listed in the new Supplement B are substantially similar to felonious assault.

The Director concluded that the Petitioner did not establish his eligibility for U nonimmigrant status and upheld the original denial. The Director stated that the Petitioner would receive a decision under separate cover.

On appeal, the Petitioner submits a brief, arguing that the Director failed to include the reasons why USCIS determined the Petitioner was not eligible for U classification and contends he has not received a decision under separate cover. He repeats his previous argument that the newly certified Supplement B, which listed California Penal Code § 12022.7 for sentence enhancements, demonstrates that the criminal activity perpetrated against his son is substantially similar to felonious assault under California law. He resubmits documents that were already in the record, including the updated Supplement B that he submitted with his motion.

We acknowledge that the record does not include a decision under separate cover, as the Director claimed would be provided. Nonetheless, the Petitioner, who was not present at the crime scene, has not demonstrated he is an indirect victim of qualifying criminal activity, as the Director concluded in the initial denial decision. The Petitioner has not addressed this finding, either in his motion to reopen

and reconsider or on appeal. As noted above, parents of a direct victim under the age of 21 at the time the qualifying criminal activity occurred may be considered victims themselves if they establish that the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and is unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i). We recognize that there is generally a presumption of incapacity or incompetency if the victim is under 16 years of age, but here, there is sufficient evidence to overcome the presumption. Although the record shows that the Petitioner's son was 12 years old at the time of the accident and the record includes hospital discharge records and subsequent clinic notes, there is no contention he was ever incompetent, incapacitated, or unable to provide information regarding the crime. The Petitioner speaks English and did not require a translator to help him communicate. In addition, court documents show the Petitioner's son participated in the criminal prosecution of the perpetrator. The Petitioner hasn't submitted evidence, or even alleged, that his son was incapacitated or incompetent at the time of his victimization.

Although the Petitioner's son suffered serious injuries and we are sympathetic to the family's circumstances, we lack the authority to waive or disregard the requirements of the statute, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). We further note that the U nonimmigrant visa was not intended to encompass all individuals present at, or impacted by, a crime. The U nonimmigrant program was created in order to "strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking . . . and other crimes while offering protection to . . . crime victims in keeping with the humanitarian interests of the United States," creating a unique immigration benefit that provides a path to lawful permanent residency and naturalization. Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, Pub. L. 106-386, 114 Stat. 1464, sec. 1513(a)(2); sections 245(m) and 316 of the Act, 8 U.S.C. §§ 1255(m) and 1427 (providing for, and laying out the eligibility requirements of, U-based adjustment of status to that of a lawful permanent resident and subsequent nationality through naturalization). Congress recognized the narrow scope of individuals that would be eligible for the benefit by placing a cap on the number of principal U nonimmigrant visas available per fiscal year. Section 214(p)(2) of the Act limits principal U nonimmigrant status to just 10,000 individuals per fiscal year. This statutory cap reflects congressional intent to create an immigration benefit limited to only certain individuals who were victims of qualifying criminal activity, as opposed to any individual impacted by a crime.[3]

The Petitioner has not established he was the direct or indirect victim of qualifying criminal activity, as required. The petition will remain denied.[4]

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[3] To date, the U nonimmigrant status program is vastly oversubscribed, with pending principal U petitions reaching 170,805—a number over 17 times the annual statutory cap—and a total pending case load of 285,255 petitions. Department of Homeland Security, USCIS, Form I-918, Petition for U Nonimmigrant Status (Jan. 2022), *available at* https://www.uscis.gov/tools/reports-studies/immigration-forms-data.

[4] We need not reach the issue of whether the crime that injured the Petitioner's son is qualifying criminal activity under the Act and, therefore, reserve it. Our reservation of this issue is not a stipulation that the Petitioner overcame this alternate ground of denial and should not be construed as such. Rather, there is no constructive purpose to addressing the issue because it cannot change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.