U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22316634

Date: JUL. 22, 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), and the matter is now before us on appeal. On appeal, the Petitioner submits a brief.[1] 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

[1] As discussed later in this decision, the Petitioner's brief has not been received as of the date of this decision; however, as the Petitioner submitted a cover letter containing some arguments, the appeal is not summarily dismissed.

them.[2] 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. The Petitioner Was Not the Victim of Qualifying Criminal Activity

1. Relevant Evidence and Procedural History

The Petitioner filed his U petition with a Supplement B signed and certified by the [redacted] Sheriff's Office (certifying official), based upon a [redacted] 2011 incident whereby he was robbed. In response to Part 3.1 of the Supplement B, which provides check boxes corresponding to the 28 qualifying crimes listed in section 101(a)(15)(U)(iii) of the Act, the certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to felonious assault. In response to Part 3.3, which requests the specific statutory citations for the criminal activity investigated or prosecuted as perpetrated against the Petitioner, the certifying official listed FS (Florida Statutes) 812.13(2)(C) Strong Arm Robbery – No Firearm or Weapon. The Supplement B additionally describes the factual basis for the charges. It explains that the Petitioner was approached by three subjects who were soliciting for prostitution. When the Petitioner declined, the subjects asked him for money, and then took the Petitioner's wallet and fled the scene. When asked to describe any known or documented injuries to the Petitioner, the Supplement B stated "N/A" (not applicable). It last provides that the Petitioner "was very cooperative throughout the entire investigative and prosecution phases of the case" and notes that the three subjects were arrested and prosecuted, with two of them sentenced to six months in jail, and the third subject sentenced to 30 months in prison.

The police report from the [redacted] Sheriff's Department, submitted in response to a request for evidence (RFE) from the Director, listed the incident type as "Strong Arm Robbery – No Firearm or Weapon," along with associated charges for using the Petitioner's credit cards, driver's license violations on behalf of the perpetrator, and the presence of drug paraphernalia in the vehicle. The report indicated that the perpetrators of the offense were arrested and booked on those charges, the applicable charge relating to the applicant as FS 812.13(2)(C). The report provides that three perpetrators approached the Petitioner in a vehicle and "asked if they were interested in doing business (Prostitution)." The Petitioner and his friend said they were not interested, and the perpetrators asked for gas money. The Petitioner took out his wallet and "gave the perpetrator five dollars" and "as he was placing his wallet back into his pants [the suspect] grabbed his wallet, while [the suspect] was still in the driver seat with the door open. After snatching the wallet [the suspect] closed the driver door and fled the area." As noted, the Supplement B indicated that the perpetrators were arrested and charged, with two being sentenced to six months in jail, and the third sentenced to 30 months in prison.

[2] 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.

The Petitioner's personal statement submitted with his U petition similarly provided that he was approached and solicited by three individuals who then asked him for money, and that after taking out his wallet, they took it and drove away, and added that they "almost [ran him] over in the process."

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. Specifically, the Director determined that, although the Supplement B was certified with the box checked that the Petitioner was the victim of felonious assault, the evidence and statements submitted only indicated that Robbery under FS 812.13 was investigated and prosecuted, and that FS 812.13 was not substantially similar to the Florida crime of Aggravated Assault found at 784.021.

2. 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* (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 . . . .").

On appeal, the Petitioner argues that "the term felonious assault is not a defined statutory term" and is not defined within the U.S. code or Code of Federal Regulations. The Petitioner goes on to state that "a review of reported AAO decisions indicates that the term has been construed in accordance with an online legal dictionary." In his appeal cover letter, the Petitioner now also contends that he was "dragged" while the perpetrators were driving, and that he sustained physical injuries as a result. The Petitioner further claims that "the incident report prepared by the officers investigating the incident did not fully reflect all of the circumstances of the attack." We note that none of the documentation previously in the record indicated that the Petitioner was dragged, or that he sustained any physical injuries as a result of the incident. Finally, the Petitioner states that he will submit a detailed brief within 30 days of the submission of the appeal. However, as of the date of this decision, no brief or request of extension has been received by this office, and therefore the Petitioner's arguments on appeal will be given little weight, as they are not supported by evidence.[3]

[3] Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, as noted, the new arguments being made by the Petitioner's counsel in the appeal cover letter are not supported by the record, and evidence to support them has not been received.

We acknowledge that Part 3.1 of the Supplement B submitted with the Petitioner's U petition checks the box that he was the victim of criminal activity involving or similar to the qualifying crime of felonious assault and generally lists section 812.13(2)(C) of the Florida Statues as the statutory citation investigated or prosecuted as perpetrated against him. However, the Supplement B's certification on its own does not establish, by preponderance of the evidence, that the perpetrator committed, and the Petitioner was in fact a victim of, felonious assault. *See* 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 Form I-918, Supplement B").

As a preliminary matter, the Supplement B indicated that the perpetrators were arrested, charged, and convicted, but does not indicate that they were charged with assault, and the only citation certified was FS 812.13(2)(C), Strong Arm Robbery – No Firearm or Weapon. The relevant police report, taken contemporaneous to the commission of the offense, similarly indicated that, based on the perpetrators having "snatched" the Petitioner's wallet and then fled the scene, the perpetrators were arrested and booked on charges of strong arm robbery, driving without a license, use of the Petitioner's credit cards, and drug paraphernalia being in their vehicle, under FS 812(2)(C), 322.34(5), 817.61, and 893.147(1) respectively.

3. Strong Arm Robbery – No Firearm or Weapon is not the Equivalent of or Substantially Similar to the Qualifying Crime of Felonious Assault

As stated above, to qualify as a victim for U-1 classification, petitioners must establish that the crime detected, investigated, or prosecuted as perpetrated against them, and of which they are victim, is a qualifying crime or is substantially similar to a qualifying crime. 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 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). 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. *Id.* 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).

As discussed above, the certifying official cited section 812.13(2)(C) of the Florida Statutes on the Supplement B, and the remaining evidence in the record contains no citation to any assault or aggravated assault as being perpetrated against the Petitioner. The Petitioner has not established that

the perpetrators were investigated or prosecuted for any assault as a result of the crime. The relevant evidence does not indicate that the Petitioner was the victim of assault under Florida law.

At the time of the relevant incident, robbery, as investigated against the Petitioner was defined as:

> (1) "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.
> (2)(C) If in the course of committing the robbery the offender carried no firearm, deadly weapon, or other weapon, then the robbery is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Florida Statute 812.13 (2011).

At the time of the relevant incident, section 784.011 of the Florida Statutes punished, as a misdemeanor, any person who committed "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent" (2011). Aggravated Assault was defined in Florida as "an assault (a) with a deadly weapon; (b) with an intent to commit a felony." Florida Statutes 784.021 (2011).

In this case, the evidence of record, including the Supplement B, police report, and the Petitioner's personal statement, indicated that the perpetrator snatched the Petitioner's wallet and fled the scene. While we acknowledge that the crime of robbery is classified as a felony, and that the Florida Statute for aggravated assault is defined to include "an intent to commit a felony," the evidence of record does not indicate, by a preponderance of the evidence, that law enforcement investigated or prosecuted an aggravated assault against the Petitioner. The criminal statute certified on the Supplement B, Strong Arm Robbery – No Firearm or Weapon, involves the taking of money or other property without the use of a weapon, and does not involve a deadly weapon or an intent to commit a felony. Aggravated Assault, on the other hand, involves a deadly weapon and an intent to commit a felony, but does not involve the taking of money or property. As noted previously, 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). Though we do not question the fear and shock the Petitioner describes feeling during, and as a result of, the incident, the evidence does not indicate that any assault was investigated or prosecuted as a result of the incident. Consequently, the box being checked on the Supplement B for felonious assault as having been investigated or prosecuted as perpetrated against the Petitioner on its own is insufficient to establish that the Petitioner was in fact a victim of that offense. Instead, the record shows that he was the unfortunate victim of robbery under section 812.13(2)(C) of the Florida Statutes.

B. The Remaining 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 criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.