U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22316605

Date: JUL. 28, 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 Vermont 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. 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. The Petitioner Was Not the Victim of Qualifying Criminal Activity

1. Relevant Evidence and Procedural History

The Petitioner filed her U petition in October 2015 with a Supplement B signed and certified by a Lieutenant in the [redacted] Nevada, [redacted] Police Department (certifying official). 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 "Other: Robbery." In Part 3.3 of the Supplement B, the certifying official only wrote "robbery" and did not include a statutory citation that was being investigated or prosecuted as a result of the incident. The certifying official explained that the Petitioner was a victim of robbery and referred to the attached [redacted] Police Department incident report. In the incident report, it is noted that the Petitioner was in a parking lot when the perpetrator "approached . . . and slapped [the Petitioner] in the face, disorienting her," the perpetrator then took the Petitioner's purse and fled the scene, and the officers on the scene notified a detective from the Robbery department.

The Director denied the U petition, finding that the Petitioner had not met her burden of establishing that she was the victim of qualifying criminal activity. On appeal, the Petitioner asserts that the factual circumstances of the offense were substantially similar to many other states' definitions of aggravated assault, that as robbery is a felony in Nevada, and as Nevada does not have a specific aggravated assault statute, the incident should be considered a felonious assault in the Petitioner's favor. The record does not support these assertions.

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

[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.

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 does not address the fact that law enforcement did not detect, investigate, or prosecute any qualifying criminal activity. In the Petitioner's updated statement, she reiterates that she was slapped, and also punched, in the face, before the perpetrator took her purse and fled the scene. While we do not seek to diminish the fear the Petitioner may have experienced during, and as a result of, the incident, 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 the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. *See id.*

As noted above, the Supplement B certified the Petitioner as being the victim of robbery and did not check any other boxes for the enumerated qualifying crimes. Further, the section containing space for the certifying official to specify the criminal statute that was being investigated only indicated robbery. The certifying official did not discuss an assault perpetrated against the Petitioner on the Supplement B, and while the incident report indicates the Petitioner was slapped, it similarly does not indicate that an assault was investigated. All official documentation associated with this incident indicated that it was investigated as a robbery under section 200.380 of the Nevada Revised Statutes (NRS).

Furthermore, although on appeal the Petitioner argues that what happened to her would count as felonious assault in other jurisdictions, the U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a "felonious assault" must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "felonious assault" when committed "in violation of Federal, State or local criminal law" as a qualifying criminal activity); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner).

3. Robbery under the Nevada Revised Statutes 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 only entered "robbery" as the statutory citation, which we find at section 200.380 of the NRS. 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 Nevada law.

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

> 1. . . . the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:
>
> (a) Obtain or retain possession of the property;
>
> (b) Prevent or overcome resistance to the taking; or
>
> (c) Facilitate escape.
>
> The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.
>
> 2. A person who commits robbery is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than [1 year nor] 2 years and a maximum term of not more than 15 years.

Nevada Revised Statutes 200.380 (2015).

At the time of the relevant incident, section 200.471 of the NRS defined assault as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another" (2015), and punished assault as a misdemeanor, provided the victim was not defined as an "officer." While there is no specific separate statute for an aggravated assault, the assault became a felony when the assault was "made with use of a deadly weapon, or the present ability to use a deadly weapon."

While we acknowledge that the crime of robbery is classified as a felony, and that the Nevada Statutes do not contain a specific designation for aggravated assault, the criminal statute certified on the Supplement B involves "the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property," and the crime the Petitioner claims as similar was a misdemeanor assault, which only involves the "present ability to commit a violent injury," as no weapon was used in the robbery, and involves no language regarding the taking of property. While the Petitioner provided the statutes for similar crimes from other states and jurisdictions, those are not useful in determining whether the crime the Petitioner was a victim of should be viewed as substantially similar in Nevada, or that qualifying criminal activity was detected or investigated against the Petitioner. 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). The Petitioner did not submit any evidence indicating that law enforcement detected, investigated, or prosecuted as perpetrated against her any specific Nevada statutes which involved elements that would be substantially similar to the qualifying crime of felonious assault, nor did the certifying official certify the Petitioner as being the victim of felonious assault on the Supplement B. 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, felonious or otherwise, was investigated or prosecuted as a result of the incident.

B. The Remaining Criteria for U-1 Classification

The Director further determined that the Petitioner had not demonstrated that she suffered substantial physical or mental abuse, as required by 8 C.F.R. § 214.14(b)(1). As the Petitioner's inability to establish that qualifying criminal activity was detected or investigated is dispositive of her appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on this issue. *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).

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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.