U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20680605

Date: MAR. 9, 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 and therefore also did not establish that he has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence, asserting that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. 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. 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, 375 (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. Relevant Facts and Procedural History

The Petitioner filed his U petition in February 2016 with a Supplement B signed and certified by a sergeant (certifying official) from the [redacted] Police Department in [redacted] Florida. The certifying official checked the box for "Other" in Part 3.1, adding that the Petitioner was the victim of criminal activity involving or similar to "Battery." The certifying official identified section 784.03 of the Florida Statutes Annotated (FSA) as the specific statute for the criminal activity investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official directed the reader to see the "attached police report." In the section of the Supplement B soliciting information regarding any known or documented injury to the Petitioner, the certifying official again directed the reader to see the attached police report. According to the Supplement B, the Petitioner provided information about the crime and the offender.

The police report in the record for the criminal activity referenced the incident as a battery, cited section 784.03 of the FSA corresponding to that offense, and provided that on the date of the incident in [redacted] 2005, the officer responded to a battery at the restaurant where the Petitioner worked, but the Petitioner was extremely busy working and was unable to talk to him. The officer indicated that he was able to briefly talk to the Petitioner and asked him to provide a written statement and drop it off at the police station the next day. The report summarized the accounts of two witnesses stating that one of the customers was "acting unusual," playing drums on the table with his knife and fork and appearing to be playing cards, though no one was sitting with him, and he did not have a deck of cards. The report indicated that the man got up abruptly and walked toward the direction of the bathroom where the Petitioner was waiting on a table and shoved the Petitioner, though the Petitioner did not fall or lose balance and had no visible injuries. According to the report, the man then went to the restroom and kicked the bathroom door but did not cause any damage. The reporting officer stated that the manager then instructed this individual to leave the restaurant. The report indicated that the offender was identified through his license plate number. The supplement to the police report indicated that three days later, the officer went back to the restaurant to pick up the Petitioner's statement and also to present him with photographs for the Petitioner to identify the offender.

In the statement the Petitioner provided to the police, he stated that the perpetrator attacked him from his low back and punched him. He stated that when he turned around, the man punched him more.

[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.

The Petitioner provided statements from the witnesses consistent with the information contained in the police report. With the initial filing of the petition, the Petitioner also submitted a January 2016 statement in which he provided an account of the incident that is consistent with the statement he provided to the police in 2005.

In response to a request for evidence (RFE) from the Director, the Petitioner submitted the previously submitted police report with its attachments and an undated report from a nonprofit community organization where he participated in several therapy sessions in 2019 and 2020. According to the report, the Petitioner stated that a man attacked him with a knife and tried to stab him. The report further indicated that the Petitioner fought for his life and wrestled the attacker to the floor and when he got help from others, the attacker let go of the knife and someone kicked it away. In response to the RFE, the Petitioner also submitted a December 2020 statement from another therapist stating that the Petitioner has "some symptoms" of posttraumatic stress disorder and recommends weekly therapy sessions.

After reviewing the evidence in the record, 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 concluded that while aggravated battery under section 784.045 of the FSA was substantially similar to a felonious assault as the Petitioner asserted below, the record indicated that he was the victim of battery (a misdemeanor), which is not a qualifying criminal activity and is not substantially similar to aggravated battery or felonious assault under Florida law. On appeal, the Petitioner asserts that the Director's finding was erroneous and maintains that he was a victim of a felony battery under sections 784.03 and 784.041 of the FSA and aggravated battery under section 784.045 of the FSA, rather than battery (misdemeanor) as the Director had concluded. The Petitioner also submits a supplemental statement in which he states that the man who attacked him in the restaurant threatened to kill him and told the Petitioner that he "did not belong in this country" and "should just die." The Petitioner states that the man then attacked him from behind and punched his back, tried to tackle him, and pushed him down, beating him some more.

B. The Petitioner Is Not the Victim of Qualifying Criminal Activity

1. The Qualifying Crime of Felonious Assault Was Not Detected, Investigated, or Prosecuted by Law Enforcement 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 by 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).

The Director determined that the record reflected that the certifying agency detected and investigated misdemeanor battery under section 784.03 of the FSA as having been perpetrated against the Petitioner and further concluded that battery is not a qualifying crime and is not substantially similar to one.

Here, the Supplement B, when read as a whole and in conjunction with other relevant 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, as he maintains on appeal. See 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"). As an initial matter, the Supplement B does not certify the Petitioner as a victim of criminal activity "involving or similar to" the qualifying crime of "felonious assault" that was detected and investigated by the certifying agency, as required. See Section 214(p)(1) of the Act (requiring a Supplement B certification stating that the petitioner has been, is being, or is likely to be helpful in the "investigation or prosecution of" qualifying criminal activity that serves as the basis for the U petition). Although "Felonious Assault" was one of the categories of qualifying criminal activities provided in Part 3.1, the certifying official selected the box for "Other" instead and wrote in "Battery." The certifying official also identified section 784.03 of the FSA, corresponding to "Battery; felony battery", as the statutory citation for the criminal activity detected, investigated, or prosecuted as perpetrated against the Petitioner, without specifying the subsection of the statute under which the offense fell. Furthermore, the police report, prepared contemporaneous to the offense, specifically classifies the incident as a battery under section 784.03 and does not otherwise indicate that a felonious, rather than a misdemeanor, assault or battery was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner.

Additionally, although the Petitioner asserts on appeal that he is the victim of felony battery under section 784.03 of the FSA, which he maintains is substantially similar to a felonious assault, as noted, that statutory provision is titled "Battery; felony battery" and includes both felony and misdemeanor battery offenses. Our review of the record does not show that the certifying agency detected a felony level battery offense perpetrated against the Petitioner under that statute, and to the contrary, both the Supplement B and the police records reflect that the certifying agency classified the criminal activity under section 784.03 as a "battery" rather than "felony battery." Further, a battery is a felony offense only under section 784.03(2) where the offender had a previous conviction for battery, aggravated battery, or felony battery and commits a second or subsequent battery, and nothing in the police report or Supplement B here indicates that the certifying agency detected a felony battery consistent with the requirements of subsection (2). Likewise, they do not indicate that the certifying agency detected felony battery and/or aggravated battery under sections 784.041 and 784.045 of the FSA, respectively, as the Petitioner asserts.

On appeal, the Petitioner asserts that during the commission of the battery, the offender threatened to attack him, screamed profanities that showed the intent to injure him, and caused him severe back injury, as well as long term psychological harm. The Petitioner acknowledges that the underlying police report investigated the criminal activity against him as a battery rather than a felony battery, but he notes that qualifying criminal activity may occur during the commission of the non-qualifying crime and asserts that based on these underlying facts of the criminal activity against him, the elements of felony battery were satisfied during the battery. While we agree with the Petitioner that 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 St*atus (U Interim Rule), 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007), evidence describing what may appear to be, or hypothetically could have been investigated or charged as, a qualifying crime as a matter of

fact is not sufficient to establish eligibility absent evidence indicating, by a preponderance of the evidence, that law enforcement authorities in fact detected, investigated, or prosecuted the qualifying criminal activity as perpetrated against the Petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) 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 his petition is based . . . ."). Here, as discussed, the record, including the Supplement B and the underlying police records, does not show that the certifying agency detected, investigated, or prosecuted a felony battery or assault as perpetrated against him.

We acknowledge the Petitioner's description of the incident as noted in his therapist's report, which was submitted in response to the Director's RFE.[2] According to the report, the Petitioner told his therapist, approximately 14 years after the incident, that perpetrator attacked him with a knife and tried to stab him, that the Petitioner fought for his life, and that he wrestled the attacker to the floor. However, these statements are inconsistent with the Petitioner's prior statements to the police shortly after the 2005 incident and the supplemental statements he submitted in his U petition proceedings. Moreover, regardless of the inconsistencies, nothing in the Supplement B or police records indicates that the certifying agency detected the presence of a knife, or otherwise demonstrates that a felony battery was detected, as required. While we do not diminish the fear the Petitioner may have experienced during, and as a result of, the incident, as stated, 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 his 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.

The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, 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. Sections 214(p)(1) and 291 of the Act; 8 C.F.R. § 214.14(c)(4); Matter of Chawathe, 25 I&N Dec. at 375. Considering the totality of the evidence in the record, the Petitioner has not established by a preponderance of the evidence that the law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault or any other qualifying crime as perpetrated against him. Instead, the record indicates that law enforcement detected, investigated, or prosecuted misdemeanor battery, which is not a qualifying crime.

2. Criminal Activity Substantially Similar to a Qualifying Crime Was Not Detected, Investigated, or Prosecuted by Law Enforcement as Perpetrated Against the Petitioner

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

[2] This undated report is from a nonprofit agency called "[redacted]",

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. 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). 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).

On appeal, the Petitioner asserts that the offenses of felony battery under sections 784.03 and 784.041 of the FSA, and aggravated battery under section 748.045 of the FSA, were detected as perpetrated against him and are substantially similar to qualifying crime of felony assault. He further notes that the Director had concluded correctly that aggravated battery under section 748.045 is substantially similar to a felonious assault (had that offense been detected by the certifying agency). However, as the Director found and as discussed above, the record does not contain sufficient evidence that a felony battery or aggravated battery under the FSA were at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Instead, the record reflects that the only crime detected, investigated, or prosecuted as perpetrated against the Petitioner was misdemeanor battery under section 784.03(1) of the FSA. We therefore need not reach the issue of whether the felony battery and aggravated battery offenses under the FSA sections cited by the Petitioner are substantially similar to a felonious assault in Florida, as those offenses were not detected. Further, the Petitioner does not assert on appeal that the misdemeanor battery offense detected as perpetrated against him is a qualifying crime or is substantially similar to the qualifying crime of felonious assault.

Here, the record does not establish that the certifying agency detected, investigated, or prosecuted the qualifying crime of felonious assault, or a felonious battery substantially similar to a felonious assault, as perpetrated against him, as he maintains. Instead, the preponderance of the evidence shows that the certifying agency detected only misdemeanor battery, which is not a qualifying criminal activity, and the Petitioner does not assert, and the record does not show, that misdemeanor battery is substantially similar to a qualifying crime. The Petitioner, therefore, has not established that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

C. 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 criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.