U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22099832

Date: MAY 31, 2022

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity at 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 Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that she was not the victim of a qualifying crime as defined in section 101(a)(15)(U)(i) of the Act. The Petitioner then appealed, and we subsequently dismissed the appeal. We also dismissed two subsequent motions to reopen and reconsider. The Petitioner now files a third motion, in this instance a motion to reconsider our decision, and submits a brief and previously submitted evidence. Upon review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and shows proper cause for reconsideration of the prior decision. 8 C.F.R. § 103.5(a)(1).

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.

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).

Petitioners bear the burden of proof of demonstrating 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). 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. 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

According to the Supplement B submitted with the Petitioner's U petition, in July 2013, the Petitioner was the victim of robbery. The certifying agency listed grand larceny in the fourth degree, robbery in the second degree, and criminal possession of stolen property in the fifth degree under sections 155.30(5), 160.10(1), and 160.40 of the New York Penal Law (N.Y. Penal Law), respectively, as the statutes investigated or prosecuted. In the Director's decision and our preceding decisions on appeal and motion, all incorporated here by reference, it was determined that although the record reflects that the crimes of robbery in the second degree, grand larceny in the fourth degree, and criminal possession of stolen property in the fifth degree were detected, investigated, or prosecuted by law enforcement as being perpetrated against the Petitioner, she had not established that they were qualifying crimes or substantially similar to any qualifying crime.

In our decision on appeal, we acknowledged the Petitioner's assertions regarding the factual circumstances of the offense establishing that she was the victim of the qualifying crime of felonious assault. However, we highlighted that, although 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. 53,014, 53,018 (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 . . . ."). We emphasized that 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. *See id.*

Additionally, on both first and second motion, we acknowledged the Petitioner's arguments regarding robbery in the second degree under section 160.10(1) of the N.Y Penal Code "meet[ing] the definition of" felony-level assault provisions in various other states. However, we explained that, the state statutory schemes in states outside of New York, where the crime occurred, was investigated, and was prosecuted, were not relevant to the determination of whether the Petitioner has met her burden of

establishing that law enforcement detected, investigated, or prosecuted, and she was the victim of, a qualifying crime as contemplated by section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9). *See* section 101(a)(15)(U)(i) (III) and 214(p)(1) of the Act (providing that the record must establish, and contain a certification attesting to, the Petitioner's helpfulness in the "investigation or prosecution" of qualifying criminal activity); 8 C.F.R. §§ 214.14(a)(2), (b)(3), (c)(2)(i) (reiterating that U petitioners must demonstrate their helpfulness to a certifying agency in "the investigation or prosecution of the qualifying criminal activity upon which [their] petition is based" and clarifying that the term "certifying agency" is limited to "Federal, State, or local law enforcement agenc[ies], prosecutor[s], judge[s], or other authorit[ies] that ha[ve] responsibility for the investigation or prosecution of" the relevant offense).

On the current motion, the Petitioner makes the identical arguments made on appeal and first and second motion, while expecting a different outcome. Because these arguments are cumulative to evidence already submitted and considered, and in the absence of additional legal support for or information demonstrating the renewed validity of these assertions, we adopt and affirm the Director's decisions as well as our previous decisions. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that the "independent review authority" of the Board of Immigration Appeals (Board) does not preclude adopting and affirming the decision below, in whole or in part, when "[the Board is] in agreement with the reasoning and result of that decision"); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case). The Petitioner has not shown that our decision was based on an incorrect application of law or policy and accordingly has not met the requirements for a motion to reconsider.

ORDER: The motion to reconsider is denied.