U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22956135

Date: NOV. 18, 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 qualifying criminal activity. The matter is now before us on appeal. 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, 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, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioner's 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 Supplement B must be signed by the relevant law enforcement official "within the six months immediately preceding the filing of the U petition." 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 June 2016 based on a claim that he was assaulted during a robbery that occurred while he was working the night shift at a convenience store. In support of his U petition, the Petitioner submitted a Supplement B signed and certified by a detective with the [redacted] California Police Department [redacted] (certifying official) in November 2015. The detective checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" but did not list a statutory citation for the criminal activity that was investigated or prosecuted. The Director issued a request for evidence noting in relevant part that the Supplement B was not signed within the six months immediately preceding the filing of the U petition, as 8 C.F.R. § 214.14(c)(2)(i) requires. In response, the Petitioner submitted a second Supplement B, signed by a certifying official from the [redacted] in September 2021. The certifying official again checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and listed "211 PC Robbery," in reference to section 211 of the California Penal Code (Cal. Penal Code), as the statutory citation for the criminal activity being investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated in the 2015 Supplement B that the suspect entered the store and took beer from the cooler. When the Petitioner tried to stop the suspect, the suspect "pushed and punched" the Petitioner, vandalized the location, and "threw a fire extinguisher" at the Petitioner. The certifying official indicated in the 2021 Supplement B that the suspect attempted to take beer without paying, and when the Petitioner confronted the suspect they "pushed and attempted to punch" him. In the 2015 Supplement B, the certifying official indicated that the Petitioner had an "[i]njury to the back of the head, neck and left hand." In the 2021 Supplement B, the certifying official stated that the Petitioner "sustained a small laceration to his right finger/knuckle."

In his personal statement, the Petitioner reported that a woman entered the store and wanted to buy beer, but he told her there was a store policy that alcohol could not be sold after midnight. The woman shouted at the Petitioner and he threatened to call the police. He recalled that the woman left the store but returned ten minutes later with some young men who "began vandalizing the store, abusing [the Petitioner] and misbehaving with [him]." According to the Petitioner, he tried to call the police but one of the men hit him with a fire extinguisher, causing him to fall to the floor. They then beat, kicked, and threw things at him. The Petitioner claimed that due to the severity of the head injury he suffered,

[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.

he could not recall how long the group beat him or who called the police. He stated that he was transported to the hospital, where he felt pain in his ear, head, hand, fingers, and shoulders, and the doctor told him that his right ear drum was torn. The Petitioner indicated that he has suffered ongoing hearing loss, brain damage, and memory loss as a result of the incident.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Director noted that robbery is not a qualifying crime and determined that the Petitioner had not established that the nature and elements of robbery under California law are substantially similar to a qualifying criminal activity. On appeal, the Petitioner argues the Director erred in determining he was not the victim of a qualifying crime.

B. 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*, 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 . . . .").

In this case, the Petitioner has not met his burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. We acknowledge that the certifying officials checked a box on each Supplement B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault. However, the Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *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 . . . Supplement B").

Beyond the checked boxes described above, the certifying officials did not otherwise reference the crime of assault as perpetrated against the Petitioner elsewhere in either Supplement B. As discussed, the 2015 Supplement B did not list a statutory citation for the criminal activity that was investigated or prosecuted and the 2021 Supplement B listed "211 PC Robbery." The record contains two accompanying investigative reports from the [redacted] The first indicates that on [redacted] 2015, at 1:30 a.m., the suspect entered a liquor store and removed beer from the cooler. The Petitioner tried to stop the suspect and "became involved in physical altercation" during which the suspect "pushed and punched [the Petitioner] an unk[nown] amount of times." The second investigative report indicates

that on [redacted] 2015, at 2:20 a.m.,[2] three suspects entered the store and tried to get alcohol, but it was locked. The suspects then "vandalized loc[ation] and . . . threw fire extinguisher at" the Petitioner. Neither investigative report indicates whether any particular crime was investigated. Court documents calling the Petitioner as a witness and advising him of his rights as a victim in the criminal case indicate that two suspects were charged under Cal. Penal Code section 212.5(c), which corresponds to second degree robbery. The record of proceedings before the Superior Court of California similarly shows that one of the suspects was charged with second degree robbery under Cal. Penal Code section 212.5(c) and vandalism under Cal. Penal Code section 594(a). As a result, the checked boxes on the two Supplement Bs are not consistent with the information outlined in the remainder of the documents or with the investigative reports and court documents, which served as the basis for the certification of the Supplement Bs.

The Petitioner correctly notes 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 Status*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007). However, 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 . . . ."). Although the Petitioner argues that we should not "disregard the certifying official's determination of the crime experienced by the complainant," the evidence does not support a conclusion that felonious assault was actually detected, investigated, or prosecuted as having been committed against the Petitioner. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, robbery and vandalism.

C. Robbery under California Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

As the Director correctly noted, robbery is not a qualifying crime included in section 101(a)(15)(U)(iii) of the Act. Nevertheless, the Petitioner contends that the nature and elements of robbery under California law are similar to the nature and elements of felonious assault. He alleges that "robbery is a category of criminal activity or behavior that is a qualifying criminal activity" and that a comparison between the nature and elements of robbery with "felonious assault under California law, assault with an attempt to commit a felony under federal law, and being held hostage under federal law demonstrates that robbery fits within at least one of the enumerated categories of offenses that the U visa statute encompasses." However, the Petitioner does not actually provide an analysis of the nature and elements of the crimes he mentions to show that they are similar.

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[2] The Petitioner claimed in his September 24, 2021 personal statement that a woman entered the store on [redacted] 2015, left after he said he would call the police, and then returned with several other suspects "[t]en minutes later," at which point they hit him with the fire extinguisher. At another point in his statement, he said "[t]he attack occurred on [redacted] 2015," but did not provide any other evidence regarding an incident on that date. The investigative reports indicate that there were two incidents on separate days; the suspect pushed and punched the Petitioner on [redacted] 2015, and then the suspect threw the fire extinguisher at him on [redacted] 2015. The 2015 Supplement B similarly states that the suspect "entered the location on [redacted]15" and pushed and punched the Petitioner, and on '[redacted]15 susp[ect] entered the premises again," vandalizing the store and throwing the fire extinguisher. Due to the discrepancy between the Petitioner's statement and the investigative reports and Supplement B, the timeline of the crime against the Petitioner is not clear from the record.

When a certified offense is not a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, a petitioner 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 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. 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).

California law defines assault as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." Cal. Penal Code § 240 (West 2022). For an assault to be classified as a felony, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. *See e.g.*, Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults). At the time of the crime against the Petitioner, California law defined robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." Cal. Penal Code § 211 (West 2015). Robbery in the second degree under section 212.5(c) of the Cal. Penal Code occurs, pertinently to this case, when it is any kind of robbery other than that committed against a person in a vehicle, inhabited dwelling house, or vessel, or against a person using an automated teller machine. Cal. Penal Code § 212.5(c) (West 2015).

We acknowledge that robbery under sections 211 and 212.5(c) of the Cal. Penal Code are felony offenses. However, robbery is otherwise distinct in its elements from California's equivalents to the qualifying crime of felonious assault. Robbery requires a taking of personal property as a required element of the offense, which is not required under any of California's felonious assault provisions. Also unlike the felonious assault provisions, robbery does not require the use of a weapon, force likely to produce great bodily injury, or any other aggravating circumstance, and it can be committed "without attempting to inflict violent injury, and without the present ability to do so . . . ." *People v. Wolcott*, 665 P.2d 520, 525 (Cal. 1983). Based on the foregoing, the Petitioner has not established that the nature and elements of robbery are substantially similar to felonious assault under California law.

The Petitioner further contends that the factual circumstances of the robbery against him were similar to felonious assault.[3] The Petitioner explains that the perpetrators "assaulted him when they hit him

[3] The Petitioner's brief also mentions that the robbery against him could be similar to extortion, but does not elaborate on this claim or provide any evidence or argument to indicate that extortion occurred or was investigated or prosecuted in his case.

on the head with a fire extinguisher, held him hostage so that [he] could not leave or flee." Therefore, he asserts that they "committed assault with intent to rob, or felonious assault." He further argues that "robbery is the exact type of crime to which immigrants are most vulnerable" and that a determination that robbery is not a qualifying crime "simply due to its name" would be contrary to the intent of the U nonimmigrant classification. However, as we have explained, for an offense that was investigated or prosecuted to be considered a "similar activity" to a statutorily enumerated qualifying crime, the "nature and elements" of the offenses must be substantially similar. 8 C.F.R. § 214.14(a)(9). Accordingly, the proper inquiry is not fact-based, but rather entails comparing the nature and elements of the crime 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. Here, the record does not show that the crime of felonious assault was actually detected, investigated, or prosecuted in his case or that the nature and elements of the crimes that were investigated and prosecuted – second degree robbery and vandalism – are similar to felonious assault.

We also note for the record that evidence of physical harm to the Petitioner does not support his claim that the crime against him was factually similar to felonious assault. The Petitioner previously submitted hospital records from a visit to the emergency room on April 26, 2016, showing that he complained of "right ear pain and decreased hearing x4-5 months since assaulted." The hospital records also indicate that he had received a hearing test on April 21, 2016, which showed "severe to profound mixed hearing loss in his right ear." Although we acknowledge these records and the medical issues they report, they relate to a visit to the emergency room ten months after the criminal activity upon which his claim is based and mention ear pain and hearing loss "x4-5 months" since an assault. These records are not clearly linked to the [redacted] 2015 crime against the Petitioner, and do not contain probative evidence relating to his claim that he was the victim of felonious assault at that time. Furthermore, despite the Petitioner's claim in his personal statement that he was "transported to a hospital for [his] injuries sustained due to a felonious attack to [his] person during the robbery" in [redacted] 2015, the record does not contain evidence of any medical treatment on the date(s) of the reported criminal activity at issue in this case. The police investigative reports also contain a checked box indicating "NO SERIOUS INJURY TO VICTIM" and the 2021 Supplement B states that the Petitioner "sustained a small laceration to his right finger/knuckle." Although the extent of the Petitioner's injuries is not presently at issue on appeal, the records of his physical injuries and medical care are not consistent with his claim that he was the victim of a crime similar to felonious assault in [redacted] 2015.

D. Robbery under California Law is Not Substantially Similar to the Qualifying Crime of Being Held Hostage

As noted above, the Petitioner briefly mentions that the robbery against him could be considered similar to the qualifying crime of being held hostage, which is a qualifying crime under section 101(a)(15)(U)(iii) of the Act. However, he does not provide any analysis to support this claim and states only that the perpetrators "held him hostage so that [he] could not leave or flee." He also does not allege, and the record does not show, that law enforcement actually detected, investigated, or prosecuted the crime of hostage taking. As we have discussed, the proper inquiry is not fact-based, but instead involves comparing the nature and elements of the crime certified as detected, investigated,

or prosecuted as perpetrated against the petitioner 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.

The Petitioner does not cite any state or federal law regarding hostage taking that he asserts is similar to the California crime of robbery. Under 18 U.S.C. § 1203, hostage taking occurs when someone "seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so . . . ." Under Cal. Penal Code section 236, the crime of false imprisonment is defined as "the unlawful violation of the personal liberty of another." The nature and elements of both of these offenses are distinct from robbery under California law. As we discussed above, robbery requires the taking of personal property, which is not a required element in either hostage taking under 18 U.S.C. § 1203 or false imprisonment under Cal. Penal Code section 236. Furthermore, robbery does not require seizing, detaining, or violating the personal liberty of another person, as required in 18 U.S.C. § 1203 and Cal. Penal Code section 236, respectively. Accordingly, the preponderance of the evidence does not support the Petitioner's claim that he was the victim of the qualifying crime of being held hostage.

E. 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.