



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29096907

Date: DEC. 19, 2023

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), finding the Petitioner did not establish he was the victim of a qualifying crime. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief asserting that she was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification.

We review 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 remand the matter to the Director for the issuance of a new decision.

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” and includes the “attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.” 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)(1). 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

In June 2015, the Petitioner filed her U petition with a Supplement B (first Supplement B) signed and certified by a lieutenant from the [redacted] Police Department (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “Attempt to commit any of the named crimes,” “Abusive Sexual Contact,” and “Sexual Assault.” The certifying official cited to sections 664 (general provision regarding punishment of attempted crimes), 243.4 (sexual assault and battery), and 314 (indecent exposure) of the California Penal Code (Cal. Penal Code) as the specific statutory citations investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated, in Part 3, that in [redacted] 2014, the Petitioner was running in [redacted] when a suspect came out of the women’s bathroom and pulled down his pants and began masturbating in front of her and making obscene gestures and noises. The suspect ran after the Petitioner and her friend. The certifying official noted the Petitioner reported the crime, gave a detailed description of what happened and the suspect, and affirmed her willingness to collaborate with the investigation.

The detailed police report accompanying the Supplement B contains a case narrative which mirrors the information in the Supplement B, and lists the crimes investigated as “Sex Offense, Indecent Exposure” under section 314.1 of the Cal. Penal Code, “Vagrancy” under section 647(d) of the Cal. Penal Code, “Probation/Parole Violation” under section 3056 of the Cal. Penal Code, and “Burglary” under section 459 of the Cal. Penal Code. The police report provides the investigating officer’s independent corroboration of the Petitioner’s statement:

[S]he was at the structure exercising with [her friend]. Another friend came out of the women’s bathroom, and said a man was naked in the bathroom. [Petitioner and her friend] decided to leave, and the man came out of the women’s bathroom. As [the Petitioner] put [her friend’s] child into the stroller, the man pulled down his pants and touched his genitals. [The Petitioner and her friend] were scared, so they called 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.

police. The man saw us call the police, then followed them awhile. [The Petitioner and her friend] found an AT&T worker, the guy [the suspect] saw that they were with the worker, and the [suspect] went into some offices.

In a supplement to the incident report, the investigating police officer stated he responded to another call at the same location. Another witness (Witness 2) was at the park and stated:

[S]he saw a black, male adult (about 34-35 years old, wearing khaki pants and similar colored jacket) standing inside of the woman's restroom (located just west of the [redacted] parking lot (3rd lot)). She said that he had his pants all the way down, exposing his genitals and she "saw all of his parts." He was touching his genitals while saying "come here." As soon as [Witness 2] entered the restroom and saw this, she quickly exited the restroom due to her being frightened. [Witness 2] then saw the black, male adult exit the restroom. He walked out of the [redacted] parking lot and continued eastbound on a trail, towards [redacted].

The suspect was apprehended at the police station where he was attending a class for parolees. Because the suspect was a registered sex offender who was required to wear a GPS tracking device, the police checked the tracking device and ascertained the suspect was at the location of the reported incident. The Petitioner identified the suspect at the police station.

In a July 2020 decision, the Director denied the U Petition stating that the evidence did not support the Petitioner being a victim of sexual battery as set forth in section 243.4 of the California Penal Code, stating:

In order to qualify under the investigated statutory citation PC 243.4, Sexual Battery, one of the requirements is that an intimate part of a person is touched against their will. According to documentation initially submitted, there is no indication that the victim was physically touched in any way. Furthermore, information provided does not indicate that the suspect was investigated or charged under statutory citation PC 243.4, Sexual Battery, or any other crimes showing he made physical contact with the victim.

The Director also stated that there was no evidence submitted to show that the suspect was investigated or charged under section 243.4 of the California Penal Code "or any other crimes showing that he made physical contact with the victim." Following from the finding that the Petitioner was not a victim of a qualifying criminal activity, the Director also concluded that the Petitioner did not show she suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity.

On motion to reopen and reconsider to the Director, the Petitioner provided two additional August 2020 certified Supplements B, one from a lieutenant from the Police Department of the [redacted] [redacted]² and one from an Assistant District Attorney of the [redacted] District Attorney's Office (certifying officials). The certifying officials at the [redacted]

² Two Supplements B by the same official from the [redacted] are in the record, however one of the Supplements B has a defect omitting the name of the certifying agency.

and the [redacted] District Attorney's Office checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Abusive Sexual Contact" and "Sexual Assault." The certifying official cited to sections 664 (general provision regarding punishment of attempted crimes), 243.4 (sexual assault and battery), and 314 (indecent exposure) of the California Penal Code (Cal. Penal Code) as the specific statutory citations investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, both certifying officials indicated, in Part 3, that in [redacted] 2014, the Petitioner was a victim of attempted sexual assault and attempted abusive sexual contact. Both certifying officials also stated, in Part 3, that the Petitioner was running in [redacted] when she saw a suspect come out of the women's restroom and he pulled down his pants. He held his erected penis exposed and he began masturbating in front of her making obscene gestures and noises inviting her to come near him. The suspect then ran after the Petitioner and her friend, chasing them. The Petitioner ran until she found an AT&T worker and the suspect ran away. Each certifying official concluded that given the facts of this case, this is a crime of attempted sexual assault and abusive sexual contact which was investigated under California Penal Code 243.4 PC. The investigation revealed that the suspect was a registered sex offender, was on parole, and was wearing a court-ordered GPS tracking device.

The certifying officials at the [redacted] and the [redacted] District Attorney's Office both stated that "[g]iven the facts of this case, this is a crime of attempted sexual assault and abusive sexual contact and was investigated under California Penal Code 243.4 PC." They also noted that the Petitioner appeared to have suffered substantial mental trauma as a result of being a victim of the attempted sexual abuse. Furthermore, they stated that the Petitioner reported the crime, provided a detailed description, and her cooperation led to the arrest of the suspect. The Petitioner identified the suspect and remained willing to cooperate throughout the investigation. Both certifying officials also noted that the initial police report was not all-inclusive during the preliminary investigation of the criminal complaint as it was an initial field report and that further investigation of the incident can lead to further charges.

On three subsequent motions to reopen, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity, or a victim of a crime that is "substantially similar to qualifying crimes found within regulations."

In a May 2021 decision, the Director again denied the U petition. The Director referred only to the [redacted] Incident Report, which stated the suspect was being investigated and charged with indecent exposure, vagrancy, parole violation and burglary. The Director did not discuss or explain why they found the Supplements B of three certifying officials, [redacted] Police Department, [redacted] and the [redacted] County District Attorney's Office to be deficient.

On appeal, the Petitioner contends that the [redacted] Police Department, the [redacted] and [redacted] County District Attorney's Office have each come forward and attested that the Petitioner was a victim of attempted crimes of sexual assault and abusive sexual, which is a qualifying criminal activity. The Petitioner notes that the suspect was a known registered male sex offender in the State of California, came out of the women's bathroom exposing his erect penis to the Petitioner and aggressively ran after the Petitioner, her friend and a baby in a stroller. She asserts that, had it not been for an AT&T worker that were nearby that saw the Petitioner running while pulling her friend's child stroller, the situation could have turned out much worse as the registered sex offender was closing in.

The Petitioner states that because the perpetrator was a registered sex offender, his intent was “nothing else but to sexually assault [the Petitioner] and his actions are clear, criminal and sexually abusive as supported by the evidence and the certifying officials.”

As explained below, we agree that the record establishes that law enforcement detected, investigated, or prosecuted attempted sexual assault and attempted abusive sexual contact under section 243.4 of the Cal. Penal Code as perpetrated against the Petitioner and, accordingly, the Petitioner has established that she was the victim of qualifying criminal activity as contemplated by section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9).

B. Qualifying Criminal Activity

Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act require 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. 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 . . .”).

At the time of the offense against the Petitioner, the sexual assault and abusive sexual contact was defined as:

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

Ca. Penal Code § 243.4. Section 644 of the Cal. Penal Code provides guidelines for punishing attempted crimes.

As the Petitioner argues on appeal, all Supplements B submitted with her U petition checked the box indicating that she was the victim of criminal activity involving or similar to the qualifying crime of sexual assault and abusive sexual contact. The initial Supplement B also checked attempted qualifying criminal activity and the two subsequent Supplements B cited to section 644 of the California Penal Code, the section for attempted crimes. The narrative portion of all the Supplements B described an attempted sexual assault. The narrative portions of the Police Department, the

[redacted] and [redacted] District Attorney's Office Supplements B confirm that attempted sexual assault was detected and investigated. The police report supported the description of the attempted sexual assault and attempted sexual abuse, including details about the suspect coming out the women's bathroom, pulling down his pants, masturbating an erect penis, and pursuing the Petitioner and her friend running with a baby in a stroller until a bystander intervened. The record, therefore, establishes that law enforcement detected attempted sexual assault and attempted abusive sexual contact. We acknowledge that the Director's denial relied on a passage in the initial incident report that stated the suspect was being investigated and charged with indecent exposure, vagrancy, parole violation and burglary. However, the incident report the Director relied on also contains two contemporaneous supplements, and in its totality, the incident report supports the detection and investigation of attempted sexual assault and attempted abusive sexual contact to which three certifying officials attested.

Upon our de novo review, we find that the Petitioner has established, by a preponderance of the evidence, that law enforcement detected attempted sexual abuse and attempted abusive sexual conduct under Ca. Penal Law § 243.4 as perpetrated against her. We will withdraw the Director's prior finding to the contrary.

The Director's finding that the Petitioner failed to show she suffered substantial physical or mental abuse was based solely on the erroneous finding that the Petitioner was not the victim of qualifying criminal activity. We withdraw that finding, as well, and note that the record contains evidence that the Petitioner suffered substantial physical or mental abuse as a result of being a victim of the qualifying criminal activity, including the Petitioner's declaration, eleven letters of support from friends and family describing the change in the Petitioner's personality and conduct from before and after the incident, and a mental health evaluation diagnosing post-traumatic stress disorder and depression as a result of the incident.

III. CONCLUSION

The Petitioner has established that law enforcement detected, investigated, or prosecuted, and she was the victim of, a qualifying crime. We withdraw the Director's decision and remand the matter for the Director to determine whether the Petitioner has met her burden of establishing the remaining eligibility criteria for U nonimmigrant status.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.