U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27258675

Date: July 5, 2023

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). The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief. The Administrative Appeals Office (AAO) reviews all 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 perpetrated against them. 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 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). To meet this burden, petitioners must submit, as required initial evidence, 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

The Petitioner filed his U petition in June 2016, accompanied by a Supplement B that was signed and certified by a Lieutenant of the [redacted] City Police Department (certifying official) in May 2016, based on criminal activity committed against the Petitioner in [redacted] 2015. In part 3.1 of the Supplement B, the certifying official marked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other:" and added in the corresponding space provided, "Felony DUI w/ Injuries." At part 3.3, the certifying official cited to section 41-6a-503(1)(b) of the Utah Code Annotated (Utah Code Ann.), corresponding to driving under the influence (DUI) and causing bodily injury to another person (DUI with injuries). The Supplement B states that the Petitioiner was struck while in his vehicle by a drunk driver, suffering fractured ribs, a fractured sternum, a fractured spine, a fractured pelvis, a fractured arm, a dislocated shoulder, and severe internal injuries. The internal injuries required exploratory surgery and a bowel resection. Multiple other surgeries were anticipated, and further medical documentation was submitted. The accompanying traffic collision report (traffic report) states the perpetrator was speeding at over 100 miles per hour when he crashed in the Petitioner's car (which was going very slowly because the signal had just changed to green). According to the conviction report provided, the perpetrator was arrested and pled guilty to Utah Code. Ann. section 41-61-502 and 503(1)(b), third degree felony driving under the influence.

After reviewing the petition and supporting documents, the Director issued a request for additional evidence (RFE) to demonstrate that the crimes listed on the Supplement B are substantially similar to one of the qualifying crimes listed in the Act and regulations. The Petitioner sent a letter brief asserting the statute of conviction was similar to felonious assault, Utah Code Ann. section 76-5-103. The Director subsequently denied the U petition, concluding that the record demonstrated that the Petitioner was the victim of the offense of DUI with injuries, which is not a qualifying crime.

On appeal, the Petitioner again compares the statutes for felonious assault in Utah and the statute of conviction, third degree felony driving under the influence, arguing he is a victim of qualifying criminal activity "similar" to one of the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The Petitioner asserts that the Director did not analyze the version of the DUI statute in effect at the time of conviction, which is substantially different from the current version of the statute and that examined by the Director. Furthermore, the Petitioner argues that the prior version of the DUI statute is similar to the qualifying crime of felonious assault because they both refer to inflicting serious bodily injury.

[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 statute of conviction, Utah Code Ann. section 41-6a-502, prohibited a person from operating or being in physical control of a vehicle under the influence of alcohol. Utah Code. Ann. § 41-6a-502 (West 2015). Utah Code. Ann. section 41-6a-503(b)(1), listed on the Supplement B as investigated or prosecuted by law enforcement, indicates that a individual is guilty of a third degree felony if, during the course of a driving under the influence violation, they inflict serious bodily injury upon another as a proximate result of operating a vehicle negligently. See Utah Code Ann. § 41-6a-503(b)(1) (West 2015) (providing that, as relevant to penalties for driving under the influence violations, an individual is guilty of a third degree felony if . . . "the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner"). In 2018, the Utah legislature superseded the earlier version of the statute to comport with the majority of states that employ a strict liability approach to DUI, omitting the element of serious bodily injury and the means of commission of criminally negligent driving. See Utah Code Ann. § 41-6a-502 and 503 (West 2023). The Director's decision reflects consideration of the current strict liability version of the statute, rather than the 2015 statute of conviction.

At the time of the offense against the Petitioner, Utah Code Ann. section 76-5-103 punished aggravated assault as a felony and most relevantly defined it as "an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another." Utah Code Ann. § 76-5-103 (West 2015). In order to convict a defendant of a violation of Utah Code Ann. section 76-5-103, the prosecutor must prove a minimum mindset of recklessness and must prove the defendant's actions resulted in serious bodily injury. Model Utah Jury Instructions, Second Edition, MUJI 2d CR 1320, available at https://legacy.utcourts.gov/resources-/muji/inc_list.asp?action=showRule&id=all_crim#1320. The Petitioner notes that, similarly, the police report lists "reckless driving" as one of the possible charges investigated.

The Model Jury Instructions further compare the elements of recklessness to criminal negligence, stating that "the concepts of 'recklessness' and 'criminal negligence' are similar in that both require the presence of a substantial and unjustifiable risk. They differ in that it is reckless to act if one is aware of the risk, while it is criminally negligent to act if one should be aware of the risk. In either event, the behavior must be a gross deviation from what an ordinary person would do under the same circumstances." Id.

Upon de novo review, we agree with the Petitioner that the record does not establish that the Director properly considered the relevant statutes. Additionally, the regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying an application or petition, the Director shall explain in writing the specific reasons for denial to allow the Petitioner a fair opportunity to contest the decision and provide the our office an opportunity for meaningful appellate review. Cf. Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The Director's decision states only that Utah Code Ann. section 41-6a-503 was cited to on the Supplement B and that the "criminal incident does not seem to be one of the enumerated criminal activities listed in [the] regulation." Accordingly, we will remand the matter to the Director for the issuance of a new decision analyzing what crime(s) were detected, investigated, or prosecuted as perpetrated against the Petitioner and whether those crimes are, involve, or are substantially similar to a qualifying crime.

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