U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27459562

Date: JUL. 24, 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 petition, concluding that the record did not establish that the Petitioner was a victim of qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 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).

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 Form I-918, Petition for U Nonimmigrant Status (U petition), in December 2016, based on an incident that occurred while he was working at a gas station. As support for his U petition, he submitted a Supplement B signed and certified in September 2016 by an individual in the "AC/Criminal Investigations Unit" in the [redacted] Police Department in [redacted] Texas (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other: Robbery." When asked to provide the specific statutory citations investigated or prosecuted, the certifying official only entered "Robbery" with no specific statutory citation. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official entered, "Suspects told [Petitioner] to be quiet and put his hands up. Suspect had a hammer in his hand and broke into the ATM." When asked to provide a description of any known injury to the Petitioner, certifying official entered that the Petitioner "was not injured as a result of this incident." On the final page of the Supplement B, the certifying official stated that "the incident was reported to the police and the [Petitioner] submitted a voluntary statement. Investigators exhausted all possible leads and the case has been inactivated pending new leads or witness information."

The police report submitted with the U petition did not indicate what offense was initially investigated but showed that there was an "estimated loss value" of "$2,500 to $29,999 (State Jail Felony)" and noted that the front door of the gas station was broken. The police report also provided details of the offense, noting that the "business was broken into and had article stolen. Complainant will prosecute. No injuries. Two Suspects. No arrest. Evidence tagged." The Petitioner did not provide a personal statement with his initial U petition evidence.

In response to a request for evidence (RFE) from the Director in November 2021, the Petitioner submitted an updated Supplement B signed and certified in December 2021 by a different certifying official with the [redacted] Police Department. On the updated Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and listed at section 29.03 of Texas Penal Code (Tex. Penal Code Ann.) as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. 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.

narrative portion of the updated Supplement B provided that the Petitioner "was working at a gas station when two suspects broke the glass in the door to gain entry. One suspect was armed with a crowbar and the other was carrying a sledgehammer. Suspects told the [Petitioner] to be quiet and put his hands up." This Supplement B also noted that the Petitioner was not injured as a result of the incident and that the statute of limitations had expired. The Petitioner submitted a personal statement with his response to the RFE, where he stated that two individuals entered the store and broke the glass door with a hammer. They asked him to be quiet and put his hands up and noted that one of the individuals had a hammer in his hand. The individuals used the hammer to break the ATM and took the money, and the Petitioner called the police after they left the store.

After reviewing the evidence in the record, the Director denied the U petition, concluding that evidence in the record indicated that the criminal activity investigated or prosecuted as perpetrated against the Petitioner was robbery under Texas law and that the crime of robbery is not a qualifying crime. As a result, the Director determined that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. On appeal, the Petitioner submits a brief, a copy of the Department of Homeland Security U Visa Law Enforcement Resource Guide, an updated personal statement, surveillance camera photographs from the incident, and copies of evidence already included in the record.

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* (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 . . . .").

On appeal, the Petitioner argues that the Director erred in concluding he was not the victim of the qualifying crime of felonious assault because the updated Supplement B indicates that he was the victim of felonious assault and cites to aggravated robbery under section 29.03 of the Tex. Penal Code Ann., which the Petitioner contends is substantially similar to Texas' aggravated assault statute. We acknowledge that, in the updated Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." We also acknowledge that the certifying official cited to aggravated robbery under section 29.03 of the Tex. Penal Code Ann. as the statutory citation investigated or prosecuted as perpetrated against the Petitioner. However, the updated 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").

As a preliminary matter, in the original Supplement B submitted with the Petitioner's U petition and completed approximately three months after the incident in question, the certifying official only noted that Robbery, with no Texas statutory citation, was perpetrated against the Petitioner. Further, the police report, which both accompanied and served as the basis for the certification of the original Supplement B, did not indicate any statute that law enforcement detected and investigated as perpetrated against the Petitioner, and only noted "estimated loss value" of "$2,500 to $29,999 (State Jail Felony)" and that the front door of the gas station was broken. It did not reference any assault as perpetrated against Petitioner, or an attempt to do so. Finally, the updated Supplement B was signed and certified by a different certifying official, and more than five years after the incident in question and the certification of the original Supplement B. Accordingly, and as outlined in the Director's decision, the updated Supplement B's checked box and citation to aggravated robbery under Texas law are inconsistent with the remainder of the evidence in the record.

In these proceedings, 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. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *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 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, and the Petitioner was the victim of, robbery.

C. Aggravated Robbery Under Texas Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner also contends that he was the victim of qualifying criminal activity because the nature and elements of aggravated robbery under section 29.03 of the Tex. Penal Code Ann. are substantially similar to those of felonious assault under Texas law. 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 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).

At the outset, we acknowledge that robbery under Texas law may include assaultive elements. *See Ex parte Hawkins*, 6 S.W.3d 554, 559-60 (Tex. Crim. App. 1999) (discussing the assaultive nature of robbery under the Texas Penal code). However, the U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a "felonious assault" must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred, not an underlying assault which occurred during the course of a separate and distinct felony offense. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "felonious assault" when committed "in violation of Federal, State or local criminal law" as a qualifying criminal activity); *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).

In this case, at the time of the incident forming the basis for the U petition, Texas law provided that a robbery occurs if "in the course of committing theft . . . and with intent to obtain or maintain control of the property, [the perpetrator]: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." Tex. Penal Code Ann. § 29.02(a)(1), (2) (2016). Robbery is a felony offense under Texas law. *Id.* at § 29.02(b). Aggravated robbery occurs if a person commits an offense outlined in section 29.02 and they (1) cause serious bodily injury to another; (2) use or exhibit a deadly weapon; or (3) cause bodily injury to another person or threaten or place another person in fear of imminent bodily injury or death, if the other person is: (A) 65 years of age or older; or (B) a disabled person. *Id.* at § 29.03(a) (2016).

Texas law provides that a person commits misdemeanor assault if they:

> (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
> (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
> (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Tex. Penal Code Ann. § 22.01(a)(1)-(3) (2016). In order for the offense to be classified as a felony in Texas, a person must, in pertinent part, commit an underlying assault and cause serious bodily injury to another or use or exhibit a deadly weapon during the commission of it. Tex. Penal Code Ann. § 22.02(a)(1)-(2) (2016).

We acknowledge that aggravated robbery and aggravated assault are felony offenses under Texas law. However, the elements of aggravated robbery are otherwise distinct. In this regard, aggravated robbery occurs only in the course of committing a theft and requires intent to obtain or maintain control of another's property, which is not required under any of Texas' felonious assault provisions. Accordingly, the nature and elements of aggravated robbery under section 29.03 of the Tex. Penal

Code Ann. are not substantially similar to those of Texas' felonious assault equivalents. Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that he was a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act.

D. 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. While the Petitioner has submitted statements regarding how he meets the remaining statutory eligibility criteria, since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.