U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26032601

Date: JUNE 20, 2023

Appeal of Nebraska Service Center 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 Nebraska Service Center Director (Director) denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition). The denial of the Petitioner's U petition is now before us on appeal. A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See *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.

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)(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. FACTS AND PROCEDURAL HISTORY

The Petitioner filed the U petition in April 2017. The U petition was accompanied by a Supplement B in which the District Attorney in the Office of the [redacted] District Attorney (certifying official)[2] checked the "Other" box under Part 3.1 indicating that the Petitioner was the victim of criminal activity involving or similar to: disorderly conduct. Under Part 3.3, the certifying official identified the statutory citation for the criminal activity being investigated or prosecuted as section 947.01 of the Wisconsin Statutes Annotated (Wisc. Stat. Ann.), which criminalizes disorderly conduct. Within the narrative portion characterizing the criminal activity, the certifying official indicated as follows:

> Victim was passenger in a vehicle parked outside restaurant when a hooded individual approached quickly and reached behind his back, yelling "I've got something for you." The driver of the car victim was in drove away quickly. The suspect got in a car and followed at high rate of speed and got out again at light to approach. Victim's vehicle was able to escape at this point.

When asked to provide a description of any known or documented injury to the victim, the certifying official wrote: "Victim and others in vehicle were extremely frightened and confused by the threatening behavior and pursuit."

The record also contains a police report from the [redacted] Police Department [redacted] that largely mirrors the information in the Supplement B and reflects that the perpetrator approached a vehicle in which the Petitioner was a passenger, reached behind him and said, "I've got something for you." The occupants of the vehicle felt they were about to be robbed. The vehicle sped away and the perpetrator and others gave chase in their vehicle. A passenger called the police during the chase and told the police they were being chased, they felt extremely frightened, and a weapon was possibly involved. The police located and arrested the perpetrator who denied involvement. No injuries were reported, and no weapons or contraband were recovered by the police from the perpetrator. He was charged with disorderly conduct, fingerprinted, and released with instructions to appear in court. In the Petitioner's personal statement, he claimed that the perpetrator started walking quickly toward his car and started pointing and yelling at the Petitioner and others, "I've got something for you." He "then 'popped' his trunk and he was holding a gun."

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[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.

[2] The Supplement B did not specify the title and division or office of the certifying official. The name of the certifying official was left blank, but we note it listed the head of the certifying agency who signed the Supplement B. In a May 2022 letter, the certifying official indicated that he was the District Attorney of [redacted] the head of the certifying agency, and verified that he signed the Supplement B.

In September 2022, the Director denied the U petition, concluding that the Petitioner did not establish that he was the victim of qualifying criminal activity. The Director noted that disorderly conduct is not a qualifying crime and determined that the Petitioner had not established that the nature and elements of disorderly conduct under Wisconsin law are substantially similar to qualifying criminal activity, such as felonious assault or obstruction of justice. In addition, while the Director acknowledged that some of the documents provided "indicate[d] aspects of mental and physical trauma," the Director nonetheless concluded that the Petitioner did not establish that he endured substantial physical or mental abuse as a result of the incident.

III. ANALYSIS

A. The Petitioner Was Not the Victim of Qualifying Criminal Activity

On appeal, the Petitioner argues that the Director erred in determining that he was not a victim of qualifying criminal activity and proffers four arguments. First, the Petitioner argues that the Director limited the list of criminal activity considered to the statute and those listed in Part 3.3. of the Supplement B and that commonsense calls for a broader review of eligibility even if the regulations did not call on the Director to perform a broader review of eligibility than the statutes listed. Second, the Petitioner argues the Director should have focused on the facts of the crime instead of comparing Wisconsin's "battery" statute to disorderly conduct because, under Wisconsin law, battery[3] requires substantial harm or substantial risk of bodily harm to reach felony levels. Third, the Petitioner argues that the Director should have considered obstruction of justice as qualifying criminal activity because the perpetrator denied that he was involved once he was apprehended by [redacted] officers. Fourth, the Petitioner claims that the Director erred in finding that he did not experience substantial mental or physical abuse.[4] The Petitioner's arguments are unavailing.

1. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crimes of Felonious Assault or Obstruction of Justice 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

[3] The Director considered felonious battery to be the local statutory equivalent of the qualifying crime of felonious assault because there is no statute defining or punishing assault, whether a misdemeanor or a felony, under Wisconsin law.

[4] As commentary on the broader application of the use of the Supplement B, the Petitioner also argues that the Supplement B requires individuals such as police officers who are not lawyers, and prosecutors who are not immigration lawyers, to complete the Supplement B when they are not experts in the scope of its application, nor do they understand terms such as "investigated" which the Petitioner argues has a specialized meaning.

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 outset, the Petitioner argues that the factual circumstances of the incident at issue establish that he was the victim of qualifying criminal activity, namely the qualifying crimes of felonious assault and obstruction of justice. This argument is unavailing, however, as 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 law enforcement actually detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5). As discussed further below, there is no evidence in the record establishing that law enforcement actually detected, investigated, or prosecuted any type of felonious assault or obstruction of justice as perpetrated against the Petitioner in this case. Moreover, the Petitioner's statement regarding the specifics of the incident is inconsistent with the Supplement B and the police report, as neither document indicated or corroborated that a gun was in fact observed.

On the Supplement B, the certifying official filled in the "Other" box within Part 3.1 indicating that the Petitioner was the victim of criminal activity involving or similar to only disorderly conduct. The certifying official also cited in Part 3.3 of the Supplement B that disorderly conduct was the criminal activity in question, nowhere citing to any provision involving assault or obstruction of justice under Wisconsin law. The remaining evidence in the record similarly does not reference any assault or obstruction of justice provisions under Wisconsin law or otherwise indicate that these crimes or any related to them were at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. As noted above, the police report accompanying the Supplement B likewise identified the incident as disorderly conduct and indicated that officers were dispatched to the caller who claimed that he and his friends were being chased by another vehicle.

Disorderly conduct is not a qualifying crime. *See* section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The Supplement B, when read as a whole and in conjunction with other relevant evidence in the record, does not establish, by a preponderance of the evidence, that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault or obstruction of justice as perpetrated against him. *See* section 214(p)(4) of the Act (stating that, in acting on petitions for U nonimmigrant status, the agency "shall consider any credible evidence relevant to the petition"); 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").[5] Instead, the documents indicate that the only

[5] We additionally note that Wisconsin's criminal code does not penalize the crimes of assault or felonious assault. In this case, the certifying agency could not have detected, investigated, or prosecuted felonious assault as perpetrated against the Petitioner, as the offense does not exist within its jurisdiction. *See* sections 101(a)(15)(U)(i)(III), (iii) of the Act (requiring that petitioners establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity "in violation of Federal, State, or local criminal law"); 8 C.F.R. §§ 214.14(a)(2) (defining "certifying agency" to mean, in relevant part, a local law enforcement authority "that has responsibility for the investigation or prosecution of" the qualifying crime or criminal activity), (b)(3) (providing that petitioner must establish their helpfulness in the "investigation or prosecution of the qualifying criminal activity upon which [their] petition is based").

offense the certifying agency detected, investigated, and prosecuted as perpetrated against the Petitioner was disorderly conduct under section 947.10 of the Wisc. Stat. Ann.[6]

B. Remaining Eligibility Criteria for U Nonimmigrant Status

The U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that a petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that he was the victim of qualifying criminal activity, or an offense that is substantially similar to a qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.

[6] The Petitioner does not expressly argue and, as spelled out in the Director's decision, the record does not establish that disorderly conduct under section 947.10 of the Wisc. Stat. Ann. is substantially similar to a qualifying crime. We adopt and affirm the Director's decision as it pertains to this analysis. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.).