U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29694850

Date: JAN. 03, 2024

Appeal of Vermont 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 pursuant to 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 U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director of the Vermont 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. 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.

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).

When a certified offense is not a qualifying criminal activity specifically listed 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. 8 C.F.R § 214.14(a)(9). 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. Id.

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 that the petitioner possesses information concerning the qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of it.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Although petitioners may submit any relevant, credible evidence for the agency to consider, U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Relevant Evidence and Procedural History

The Petitioner filed her U petition in July 2016. In support of the filing, the Petitioner submitted a Supplement B that was blank but for the boxes indicating the victim's name and date of birth. The Supplement B was also signed in May 2016 by an unknown individual. The Petitioner also provided an incident report for [redacted]2013, which identified the officer assigned, the report number, and the address of the incident, and contained a narrative. According to the narrative: the officer was dispatched in reference to a possible attempted burglary, met the Petitioner who advised that she heard someone knocking on the door of her residence; the Petitioner looked out the window and observed an unknown black male wearing a gray t-shirt; when she told him he was at the wrong residence, the subject began pulling on the doorknob and told her to open the door; the Petitioner then said she would call the police and the subject left the residence; and the officer patrolled the area with assisting officers but were unable to locate the subject. The Petitioner also submitted a May 2016 behavioral health assessment, where she told the medical professional that the "black person intruded into [her] place of residence and threatened [her] with a weapon – [she] said that she began to scream and grabbed phone to contact police, then the person left."

The Director issued a request for evidence (RFE) and in response, the Petitioner submitted a new Supplement B, issued in March 2023 by the chief of police (certifying official) of the [redacted], located in the State of Louisiana. In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the certifying official checked the box for "Felonious Assault." In part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying official identified Louisiana Statutes Annotated (La. Stat. Ann.) section 14:62, titled simple burglary. La. Stat. Ann. § 14:62 (2013). In Part 3.6, which requests a description of the criminal activity being investigated or prosecuted, the certifying official states:

[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.

> Victim was in her residence when she heard someone knocking at the door. When she went answer the door, an unknown black male wearing a gray T-Shirt. When she advised that there was a wrong residence, he began to pull on the door knob and was telling her to open the door. The subject left when the victim told him that she was going to call the police.

The Petitioner also included in her response to the RFE an undated personal statement describing the subject as threatening to kill her and carrying a gun.

In August 2023, the Director denied the U petition, determining, in relevant part, that the Petitioner was not a victim of a qualifying criminal activity because the record evidenced that the crime investigated was burglary, which is not an enumerated crime or substantially similar to an enumerated crime under section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9). The Director explained that while felonious assault was checked off on the Supplement B, the supporting documents do not indicate that felonious assault was detected or investigated by law enforcement. The Director also determined that the nature and elements of burglary and felonious assault are not substantially similar. On appeal, the Petitioner submits new documents, which include a brief and a personal statement describing the subject of the incident as armed with a black weapon. She states he kicked at the door, and yelled profanities. She explained she was unable to explain herself well to the officer who investigated the incident because she did not speak English at the time.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime

One requirement to qualify for U-1 nonimmigrant classification is that U petitioners establish they have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. "Investigation or prosecution" of qualifying criminal activity "refers to 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) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(12) and (b)(3).

On appeal, the Petitioner asserts that the Director erred in concluding that law enforcement did not detect, investigate, or prosecute the qualifying crime of felonious assault. At the time of the crime, felonious assault, or aggravated assault in Louisiana, was defined as assault committed with a dangerous weapon. La. Stat. Ann. § 14:37 (2013). The incident report that was submitted with the U petition describes possible attempted burglary as the basis of the investigative report. Neither Part 3.6 of the Supplement B, describing the criminal activity, nor the investigative report make reference to the use of a weapon. Further, the certifying official did not cite to felonious assault but simple

burglary under Louisiana law when providing the statutory citations being investigated or prosecuted, in Part 3.3 of the Supplement B.

The Petitioner states on appeal that there was a language barrier, which may be why she was unable to fully communicate the crime as it occurred. However, the Petitioner was able to communicate to the officer, for example, that she saw the subject through a window, that the subject's race was black, sex was male, and that he was wearing a gray t-shirt. She has therefore not met her burden by a preponderance of the evidence in establishing that she described a weapon to the officer and that information did not make it into the report. The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. See 8 C.F.R. § 214.14(c)(4); see also Chawathe, 25 I&N Dec. at 375.

We acknowledge that the behavioral health assessment notes that the subject that came to the Petitioner's home in 2013 had a weapon. However, this assessment is based on the Petitioner's testimony three years after the incident and diverges from the incident report not only in claiming there was a weapon but also in describing the subject as having "intruded into her home." As discussed above, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). The Petitioner's statements, without corroboration in the record by law enforcement documents establishing that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault do not meet the evidentiary requirements established in the Act or guiding regulations. To the extent that the Petitioner contends that the factual circumstances of the incident establish that she was the victim of felonious assault under Louisiana law, 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).

Considering the totality of the evidence in the record, the Petitioner has not established by a preponderance of the evidence that that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault or any other qualifying crime as perpetrated against her.

C. Burglary Under Louisiana Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner asserts that she was the victim of qualifying criminal activity because the nature and elements of the certified offense, here simple burglary, are substantially similar to those of felonious assault under Louisiana 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. See 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 time of the offense, La. Stat. Ann. section 14:62 defined simple burglary, in relevant part, as, "the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein, other than as set forth in [La. Stat. Ann. section 14:60]."[2] Assault is defined as "an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery." La. Stat. Ann. § 14:36 (2013). As discussed above, for an assault to rise to a felony, it has to have been committed with a dangerous weapon. La. Stat. Ann. § 14:37. Based on the foregoing, the nature and elements of the two crimes under Louisiana law are not substantially similar, i.e., the qualifying crime of felonious assault requires the element of assault, while the statute for simple burglary does not. The Petitioner has therefore not established by a preponderance of the evidence that simple burglary under Louisiana law is substantially similar to felonious assault or any other qualifying criminal activity.

## III. CONCLUSION

The Petitioner has not demonstrated she is the victim of a qualifying criminal activity and is not eligible for classification as a U-1 nonimmigrant.

ORDER: The appeal is dismissed.

[2] La. Stat. Ann. section 14:60 is titled aggravated burglary. La. Stat. Ann. § 14:60 (2013).