U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 22584035

Date: Dec. 9, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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, concluding that the Petitioner did not establish that she was the victim of a qualifying crime, or a crime substantially similar to a qualifying criminal activity. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

To establish eligibility for U 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.

"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 Forms I-918. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines,

[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.

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). 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).

## II. ANALYSIS

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

#### 1. Relevant Evidence and Procedural History

The Petitioner filed her Form I-918 in June 2016 with a Supplement B signed and certified by the director of the Office of Immigrant Affairs at the [redacted] (New York) District Attorney's Office (certifying official). The certifying official checked a box to indicate that the Petitioner was the victim of criminal activity involving or similar to "Other:" and inserted "Grand Larceny 3rd" in the space provided. The certifying official cited to sections 155.35-1 (Grand larceny in the third degree), 170.25 (Criminal possession of a forged instrument in the second degree), and 190.65-1 (Scheme to defraud in the first degree) of the New York Penal Law (NYPL) as the specific citations for the criminal activity being investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, and any known or documented injury to the Petitioner, the certifying official referred to an attached letter that indicated that the Petitioner reported the crime to the [redacted] Police Department [redacted], discussed the criminal case with employees of the [redacted] District Attorney's Office, and agreed to testify at trial, as required, but did not describe the specific involvement of the Petitioner, or the extent to which she was a victim of the investigated criminal activity.

In the Petitioner's statements, she noted that in her attempt to legalize her immigration status, she provided $4,000 to D-B-, a travel agent, who claimed he could assist the Petitioner and her spouse with filing immigration forms.[2] The Petitioner transferred payment to D-B- in [redacted] 2015, but soon after discovered that D-B- was implicated in a fraud scheme, which prompted her and her spouse to contact law enforcement.

Copies of depositions from a Department of Homeland Security Special Agent, and a [redacted] District Attorney's Office Detective, do not specifically identify the Petitioner, but state that D-B- committed offenses under sections 155.35-1, 170.25, and 190.65-1 of the NYPL. D-B- was indicted under sections 155.35-1 (combined with section 110 for attempt) and 190.60 of the NYPL, and ultimately pleaded guilty to both in [redacted] 2016.

In support of her Form I-918, the Petitioner stated she was the victim of Grand Larceny in the third degree, and Scheme to defraud in the first degree, and proposed that these crimes were substantially similar to 18 U.S.C. § 1505, Obstruction of Proceedings Before Departments, Agencies, and Committees, and 18 U.S.C. § 1351, Fraud in Foreign Labor Contracting.

[2] We use initials to protect the identity of individuals.

The Director denied the Form I-918, concluding that the Petitioner did not establish that she was the victim of qualifying criminal activity because the crimes she was a victim of were not enumerated under or substantially similar to the qualifying criminal activities listed in section 8 C.F.R. 214.14(a)(9).

On appeal, the Petitioner admits that sections 155.35-1 and 190.65-1 of the NYPL are not statutorily enumerated criminal activities, but argues that we should review the underyling record to determine what crimes were detected, investigated, or prosecuted to establish she was the victim of 18 U.S.C. §§ 1351 and 1505. The Petitioner also repeats her argument that sections 155.35-1 and 190.65-1 are substantially similar to the same federal statutes.

2. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

As discussed above, the Act requires those seeking U nonimmigrant classification 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." 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 . . . .").

At the outset, neither the Supplement B nor any law enforcement record cite to 18 U.S.C. §§ 1351 or 1505 as the crimes investigated as perpetrated against the Petitioner. In part 3.1 of the original Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other:," and indicated "Grand Larceny 3rd." The certifying official notably did not check a corresponding box for obstruction of justice and did not check any other box indicating that the Petitioner was the victim of any qualifying crime on the Supplement B.

We acknowledge that part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Here, however, part 3.3 of the Supplement B, specifically requesting the citation for the crime investigated or prosecuted, does not contain 18 U.S.C. §§ 1351 or 1505, and instead lists sections 155.35-1 (Grand larceny in the third degree when the value of the property exceeds three thousand dollars), 170.25 (Criminal possession of a forged instrument in the second degree), and 190.65-1 (Scheme to defraud in the first degree) of the NYPL. Moreover, the remaining evidence in the record does not cite to or reference 18 U.S.C. §§ 1351 or 1505 or even more generally to any detection or investigation of recruiting, soliciting, or hiring a person outside the United States, or that any

proceeding before a government agency was detected or investigated.[3] The Petitioner bears the burden to demonstrate eligibility by a preponderance of the evidence, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Sections 101(a)(15)(U)(i)(III), 214(p)(1), and 291 of the Act; 8 C.F.R. §§ 214.14(a)(5) and (c)(4). The Petitioner's assertions as to what hypothetically could have been detected or investigated as a qualifying crime are insufficient to meet her burden. The record does not establish that law enforcement detected, investigated, or prosecuted 18 U.S.C. §§ 1351 or 1505. Review of the record similarly does not establish law enforcement detected, investigated, or prosecuted any other qualifying criminal activity.

3. Grand Larceny in the Third Degree, Criminal Possession of a Forged Instrument in the Second Degree, and Scheme to Defraud in the First Degree are not Substantially Similar to the Qualifying Crimes of Obstruction of Justice or Fraud in Foreign Labor Contracting

As stated above, to qualify as a victim for U nonimmigrant classification, petitioners must establish that the crime detected, investigated, or prosecuted as perpetrated against them, and of which they are a victim, is a qualifying crime or is substantially similar to a qualifying crime. 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 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). 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. *Id.*

The Petitioner asserts on appeal that sections 155.35-1 and 190.65-1 of the NYPL are substantially similar to 18 U.S.C. §§ 1351 and 1505 because: (1) the perpetrator of the crimes above attempted to corruptly influence obstruct or impede the proper administration of the law in a pending proceeding before USCIS by preparing and promising to submit fraudulent forms to USCIS; and (2) the perpetrator falsely promised to obtain documents for the Petitioner that would allow her to be legally employed.

The Petitioner has not established that the nature and elements of sections 155.35-1 or 190.65-1 of the NYPL are substantially similar to those of the qualifying crime of obstruction of justice or fraud in foreign labor contracting. The New York crimes of grand larceny and scheme to defraud do not involve the elements of influencing, obstructing, or impeding a pending proceeding that are found in obstruction of justice. *Compare* NYPL §§ 155.35-1, 190.65-1 *with* 18 U.S.C. § 1505 (West 2004). Those New York crimes also do not involve recruiting, soliciting, or hiring a person outside the United States, which are elements of fraud in foreign labor contracting. *Compare* NYPL §§ 155.35-1, 190.65-1 *with* 18 U.S.C. § 1351 (West 2004). Therefore, the Petitioner has not demonstrated that she was a victim of the qualifying crime of obstruction of justice, fraud in foreign labor contracting, or

[3] We note that the record does not establish that any petition or application was actually submitted to any government department or agency.

any other qualifying crime at section 101(a)(15)(U)(iii) of the Act.

Finally, the Petitioner argues that she is aware of other individuals who were victims of the same criminal activity committed by the same perpetrator who had obtained U nonimmigrant "bona fide determination notices." However, the bona fide determination does not imply an approval of a U nonimmigrant petition. USCIS determines that a principal petition is bona fide if the petitioner has properly filed a complete U nonimmigrant petition, including all required initial evidence, which includes a complete and properly filed Supplement B submitted within six months of the certifier's signature, a personal statement from the petitioner describing the facts of the victimization, and USCIS has received the result of the principal petitioner's background checks based upon biometrics. *See* 3 *USCIS Policy Manual* C.5(A)(1), https://www.uscis.gov/policymanual. A bona fide determination does not involve a full review of the principal petitioner's case, and shows only that they have met the initial evidentiary requirements of the U nonimmigrant petition.

B. The Remaining Eligibility Criteria for U Nonimmigrant Classification

U nonimmigrant 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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

**ORDER:** The appeal is dismissed.