U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25035521

Date: MAY 31, 2023

Appeal of Nebraska 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the record did not establish that the Petitioner 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

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

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).

USCIS has sole jurisdiction over U petitions, and petitioners bear the burden of proof 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). As a part of meeting this burden, petitioners must submit a Form I-918 Supplement B,

U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the qualifying criminal activity.[1] Section 214(p)(1) of the Act; 8 U.S.C. § 1184(p)(1), 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider establishing that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

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

The Petitioner filed the U petition in 2016 with a Supplement B signed and certified by an officer of the [redacted] Police Department (certifying official). The certifying official indicated that felonious assault was the qualifying crime, then cited to theft in the second degree under section 9A.56.040 of the Revised Code of Washington (Wash. Rev. Code. Ann.) as the statute that was investigated, detected, or prosecuted. When asked to describe the criminal activity, the certifying official noted that the Petitioner had her purse ripped from her grasp while walking. When asked to describe injuries, the certifying official noted that none were listed at the time of the report. The [redacted] Police Department prepared a case report following the incident (police report) indicating that the Petitioner was walking when her purse was ripped from her grasp and the perpetrator fled. The police report notes that the Petitioner denied sustaining injuries but indicates that she was visibly upset and crying. This report also listed the offense as theft in the second degree.

The Director issued a request for evidence (RFE), asking the Petitioner to provide additional information regarding the criminal activity and any additional documentation including police reports and court transcripts. In response to the RFE, the Petitioner argued that she was the victim of robbery as the police report reflected a forcible taking of her purse. She contended that she was therefore a victim of felonious assault, as she was assaulted while a felony was committed. Finally, she argued that she was also a victim of felonious assault as her child was born prematurely following the theft. The Director denied the U petition, finding that the Petitioner had not established that she was the victim of qualifying criminal activity.

On appeal, the Petitioner asserts that, based on the factual circumstances of the offense, she was the victim of a felony robbery and was necessarily a victim of assault in either the first or second degree, which she asserts is Washington's statutory equivalent to the qualifying crime of felonious assault. Wash. Rev. Code Ann. §§ 9A.56.200, 9A.56.210, 9A.36.011, 9A.36.021 (2011). Alternatively, she argues that the robbery in this case necessarily caused a felonious assault and therefore should be considered qualifying criminal activity under the Act and relevant regulations. The record does not support these assertions.

[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.

1. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crime of Felonious Assault as Perpetrated Against the Petitioner

As stated above, the Act requires that petitioners "ha[ve] 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).

We acknowledge that, on the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity "involving or similar to" the qualifying crime of "felonious assault." However, 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 as perpetrated against her. *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").

The Petitioner emphasizes that she had her property forcibly removed from her person and argues that the underlying conduct was misclassified as a theft. She contends that due to the use of force in ripping her purse from her grasp she was the victim of a robbery, not of a theft. She also stresses that she delivered her child prematurely following this incident; she believes the stress of being a victim of criminal activity contributed to the early delivery. She argues that because of the nature of the offense and the subsequent harm and injury, she can establish that she was the victim of a felonious assault under Washington law. While we do not diminish the fear the Petitioner may have experienced during, and as a result of, the incident, evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime is not sufficient to establish a petitioner's eligibility. A petitioner must present evidence that the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act.

Here, the Supplement B itself cites to theft in the second degree under Wash. Rev. Code. Ann. section 9A.56.040 as the statute investigated or prosecuted as perpetrated against her. The police report, taken contemporaneous to the offense, indicates that police were dispatched to a strongarm robbery, but ultimately classified the incident as a theft in the second degree. Neither the Supplement B nor the police report references assault or otherwise indicates that an assault was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Instead, the documents indicate that the only offenses the certifying agency detected, investigated, and prosecuted as perpetrated against the Petitioner were theft in the second degree and strongarm robbery, which are not qualifying criminal activity.

2. Neither Theft Nor Robbery in Washington Is Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner argues that, although theft was listed as the certified offense, the police report indicates that she was the victim of robbery. She then argues that the robbery as committed necessarily made her a victim of first or second degree assault, which is substantially similar to the qualifying crime of felonious assault. 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. *Id.* 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 against the Petitioner, robbery was defined as follows:

> A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

Wash. Rev. Code Ann. 9A.56.190 (2011).

Sections 9A.56.210 and 9A.56.211 classified robbery as a felony; section 9A.56.211 elevated the severity of the offense for aggravating factors such as use of a weapon or infliction of serious injury but did not alter the definition of robbery. Wash. Rev. Code Ann. §§ 9A.56.210 and 9A.56.211 (2011).

Because the term is not defined by statute, Washington relies on a common law definition of assault. Courts in Washington have generally described the types of conduct constituting assault as follows:

> Washington recognizes three common law definitions of "assault": "(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury

> upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm." Furthermore, under the common law "specific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault."

State v. Abuan, 257 P.3d 1, 10 (Wash. Ct. App. 2011).

For an assault to be classified as a felony in Washington, one of several aggravating factors must be present. *See generally* Wash. Rev. Code Ann. §§ 9A.36.011, 9A.36.021, 9A.36.031 (2011). The Petitioner highlights the sections of these statutes criminalizing an assault with the intent to cause great bodily harm, the infliction of an injury to a mother causing harm to an unborn child, and assault during the commission of a felony. *Id.*

Robbery in Washington does not involve, and is not substantially similar to, felonious assault under sections 9A.36.011, 9A.36.021, and 9A.36.031 of the Wash. Rev. Code Ann. To sustain a conviction for felonious assault, the state must prove the commission of an underlying assault with an aggravating factor such as commission of a separate felony or the infliction of an injury or bodily harm.[2] *Id.* The sections of the statute that reference the perpetrator's intent indicate that the intent must be to commit bodily harm. *Id.* Critically, however, a conviction for robbery requires the taking of personal property and also requires that any force or fear be caused for the purpose of obtaining or retaining property. Wash. Rev. Code Ann. 9A.56.190 (2011); *see also* 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 37.50 (5th ed.) ("A person commits the crime of robbery…when he or she unlawfully and *with intent to commit theft thereof takes personal property* from the person.") (emphasis added).

We acknowledge, as asserted by the Petitioner on appeal, that there is some overlap between the definitions of assault and robbery. Both can be accomplished by the use of physical force or by causing another to feel fear. However, robbery requires the intent to obtain or retain possession of property, whereas courts in Washington have required the specific intent to cause bodily harm or the fear of bodily harm for assault convictions. Consequently, the nature and elements of robbery are not substantially similar to first and second degree felonious assault in Washington. As stated, while portions of felony robbery under sections 9A.56.210 and 9A.56.211 of the Wash. Rev. Code Ann. may, in certain circumstances, overlap with the state's equivalent to the qualifying crime of felonious assault, the regulations require more—specifically, substantial similarities in both the nature and the elements of the specific offenses in question. 8 C.F.R. § 214.14(a)(9); *see also* Black's Law Dictionary (11th ed. 2019) (defining "nature" as the "essence of something," while defining "elements of a crime" as the "constituent parts of a crime . . . that the prosecution must prove to sustain a conviction"). Accordingly, even if she could establish that law enforcement detected a felony robbery rather than the theft statute cited, she cannot establish that being the victim of a felony robbery necessarily makes her a victim of first- or second-degree assault. The Petitioner has not met her burden of establishing, by a preponderance of the evidence, that felony robbery involves or is substantially similar to the qualifying crime of felonious assault

[2] Other means of showing felonious assault include knowing transmission of HIV and the administration of noxious substances or poisons, which are not at issue in this appeal.

While not specifically addressed by the Petitioner on appeal, we also consider whether the certified crime of theft is substantially similar to felonious assault. This crime was defined as follows in 2011:

> (1) A person is guilty of theft in the second degree if he or she commits theft of:
>
> (a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in [Wash. Rev. Code. Ann.] 9.41.010 or a motor vehicle; or
>
> (b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or
>
> (c) An access device.

Wash. Rev. Code Ann. 9A.56.040 (2011).

The theft statute requires a jury to find a theft of private or public property to sustain a conviction, which assault does not require. As discussed above, assault requires an intent to commit bodily harm, which is absent from the theft statute. The Petitioner has not met her burden of establishing, by a preponderance of the evidence, that theft in the second degree involves or is substantially similar to the qualifying crime of felonious assault

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

III. CONCLUSION

The Petitioner has not met her burden of proof to establish, by a preponderance of the evidence, that she is the victim of qualifying criminal activity. The record shows that the Petitioner was the unfortunate victim of theft, but this offense is not a qualifying crime at section 101(a)(15)(U)(iii) of the Act, nor is it substantially similar to a qualifying crime. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.