U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28745088

Date: NOV. 06, 2023

Motion on Administrative Appeals Office 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 Nebraska 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. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner submits a legal brief and statutory printouts. Upon review, we will dismiss the motion.

I. LAW

The 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, 375-76 (AAO 2010).

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. Relevant Facts and Procedural History

With his U petition, the Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), certified in [ ] 2016 by the District Attorney for [ ] County, Pennsylvania (certifying official). 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 "Other: Simple Assault." Part 3.3 identifies "Title 18 Sec 2701(a1)" as the statutory citation for the criminal activity being investigated or prosecuted. 18 Purdon's Pennsylvania Statutes and Consolidated Statutes (Pa. Stat. and Cons. Stat.) section 2701 is titled "Simple assault." (2016). Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, provides: "[v]ictim was struck about the face and the back of the head by the defendant." The Petitioner also provided a preliminary hearing notice which charged the defendant with simple assault, citing 18 Pa. Stat. and Cons. Stat. section 2701(a)(1), and a copy of the initial incident report, which also had simple assault listed under "crime." In response to the Director's request for evidence, the Petitioner provided an updated Supplement B by the same certifying official, which checked the box for "Felonious Assault" in Part 3.1. The statutory citation for the criminal activity being investigated or prosecuted remained the same. However, the parts requesting a description of the criminal activity and the victim's injury were blank. On appeal, the Petitioner claimed law enforcement detected felonious assault and stalking and that he was a victim of both qualifying crimes. We dismissed the Petitioner's appeal concluding he did not establish by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. We also concluded that the Petitioner had not established that simple assault was substantially similar to the qualifying crimes of felonious assault and stalking under Pennsylvania law.

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). A Supplement B is required to establish the petitioner's helpfulness in the investigation or prosecution of the crime(s) perpetrated against them. See section 214(p)(1) of the Act (requiring the submission of the Supplement B to show that the petitioner "'has been helpful, is being helpful, or is likely to be helpful' in the investigation or prosecution of" qualifying criminal activity) and 8 C.F.R. § 214.14(a)(12) (stating that the Supplement B "confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which [they are] a victim"); 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 . . . ."). 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 motion, the Petitioner contends we erred in our analysis and refers us to his declarations in support of his assertion that law enforcement detected felonious assault and stalking. As we explained in our appeal decision, evidence of what appear to be or hypothetically could have been charged is not sufficient to establish a petitioner's eligibility. The Petitioner's affidavits, without corroboration in

the record by law enforcement documents establishing that law enforcement actually detected, investigated, or prosecuted the qualifying crimes of felonious assault and stalking, do not meet the evidentiary requirements established in the Act or guiding regulations.

The Petitioner also argues that we unreasonably requested an explanation for why the certifying official checked the box for felonious assault in the updated Supplement B, asserting, i.e., he has no control over what is stated on a Supplement B and we should assume a presumption of regularity with respect to the Supplement B. In our prior decision, we acknowledged that the certifying official checked the box for felonious assault on the updated Supplement B, but we noted that he cited to simple assault, and the supporting documentation by law enforcement did not indicate that felonious assault was detected, investigated, or prosecuted. USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4). As a result, we concluded that the certifying official's checking of a box, without documentation supporting why the box was checked, did not establish that he detected, investigated, or prosecuted felonious assault. We similarly reviewed the record and concluded the Supplements Bs and the law enforcement documents made no reference to stalking. 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. 8 C.F.R. § 214.14(c)(4); Chawathe, 25 I&N Dec. at 375. The Petitioner has not addressed the inconsistencies in the record or otherwise established that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault and stalking as perpetrated against him.

B. The Petitioner is Not a Victim of a Qualifying Crime Under Pennsylvania 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).

18 Pa. Stat. and Cons. Stat. section 2701(a)(1), defines simple assault as "attempt[ing] to cause or intentionally, knowingly or recklessly caus[ing] bodily injury to another[.]" A person is guilty of aggravated assault, in relevant part, if they "attempt[] to cause serious bodily injury to another, or cause[] such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life." 18 Pa. Stat. and Cons. Stat. § 2702(a)(1) (2016). Stalking is defined in 18 Pa. Stat. and Cons. Stat. section 2709.1(a) and requires, in relevant part, "(1) engag[ing]

in a course of conduct or repeatedly commit[ing] acts . . . (2) engag[ing] in a course of conduct or repeatedly communicat[ing] to another person . . . ." (2016).

The Petitioner asserts that we erred in our appeal decision by not analyzing whether simple assault was substantially similar to aggravated assault under 18 Pa. Stat. and Cons. Stat. section 2702(a)(1) or stalking under 18 Pa. Stat. and Cons. Stat. section 2709.1(a)(2). We note that we miscited aggravated assault in our appeal decision as "section 2701(2)," however, we did analyze section 2702(a)(1) and explained that aggravated assault requires "serious bodily injury" which is not an element required by simple assault. Simple assault requires "bodily injury." 18 Pa. Stat. and Cons. Stat. § 2701(a)(1). Similarly, we analyzed stalking and explained that it requires a repeated act or repeated communication versus simple assault, which is an isolated crime. Because both aggravated assault and stalking require additional elements not required by simple assault, we concluded the Petitioner had not established that the certified offense of simple assault involved, or had elements of the offense substantially similar to, felonious assault or stalking as defined under Pennsylvania law. The Petitioner does not address these issues on motion and does not raise law or policy evidencing we erred in our analysis.

III. CONCLUSION

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.