U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28567330

Date: NOV. 7, 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 a qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 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 was not the victim of a qualifying criminal activity or a crime substantially similar to a qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence.

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 a 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. 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).

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)(l5)(U)(iii) of the Act. *Id.*

While a 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.

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' credible and reliable information regarding, and 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)(4). 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. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in January 2016 with a Supplement B, dated July 2015, signed and certified by the Central Command Captain of the [redacted] County Sheriff's Office in [redacted] Texas (certifying official). The certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Domestic Violence," and instead of annotating a statutory citation, indicated "terroristic threat / family violence" as the criminal activity investigated or prosecuted. In response to the Director's request for evidence (RFE), the Petitioner submitted a second Supplement B, dated October 2020, signed and certified by a new individual in the same position and also checking the box indicating the Petitioner was the victim of "domestic violence." The second Supplement B lists "terroristic threat / family violence [section] 22.07 [of the Texas Penal Code Annotated (Tex. Penal Code Ann.)]" as the specific statutory citation investigated or prosecuted. Where asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that "the suspect threatened to kill the victim, put his body in a plastic bag and deliver it to his daughter." The [redacted] County Sheriff's Office incident report accompanying the Supplement B identified the "means of attack" as a "threat – intimidation (simple assault)" and indicated "no" where asked if it related to family violence. The narrative portion of the incident report

[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.

explained that the Petitioner's daughter, who was 19-years-old and living with the Petitioner at the time of the incident, was in an intermittent romantic relationship with the perpetrator for about one year when the perpetrator called the Petitioner's daughter and told her he was going to come to her house and kill her father (the Petitioner). The report indicated that the perpetrator told the Petitioner's daughter that he would kill her father (the Petitioner), put him in a garbage bag, and deliver him to her. It further indicated that the Petitioner and his daughter believed that the perpetrator was capable of following through with his threats and committing this crime and were afraid for their safety and that of their other family members. In a personal statement, the Petitioner described the incident similar to the information in the incident report.

In denying the U petition, the Director noted that the Petitioner's daughter's former boyfriend (the perpetrator) threatened to kill the Petitioner if he interfered in their relationship. The Director concluded that, although the perpetrator committed terroristic threats against the Petitioner, the Petitioner's relationship with his daughter's former partner did not meet the definitions outlined in the Texas Family Code Annotated (Tex. Fam. Code Ann.) for family violence. The Director further concluded that the Petitioner was the victim of terroristic threats, which is not one of the crimes listed in section 101(a)(15)(U)(iii) of the Act, and is not substantially similar to a qualifying crime, specifically felonious assault.

The Petitioner subsequently filed a motion to reconsider with the Director, asserting that he was the victim of terroristic threats / family violence, which is substantially similar to the crimes of domestic violence and stalking. The Petitioner also argued that the family violence annotation by the [redacted] County Sheriff's Office and the courts is conclusory evidence that he was a member of the household included within the definition of family violence under Texas law.

The Director acknowledged that the Supplement B and court documents made a determination that family violence occurred. However, the Director determined that the issue in question was not whether there was a family violence component, rather it was that the threatened harm to the Petitioner did not meet the definition of family violence according to Texas law. The Director noted that the family violence component of the crime referred to the Petitioner's daughter who was in a romantic relationship with the perpetrator. The Director reiterated that the Petitioner was a victim of terroristic threats, which is not a qualifying crime, and concluded that the record did not contain evidence demonstrating that law enforcement detected or investigated stalking as perpetrated against the Petitioner.

On appeal, the Petitioner claims that he was the victim of family violence under the Texas Penal Code and Texas Family Law as the perpetrator was "a member of the [Petitioner's] household and/or was in an intimate relationship with [the Petitioner], as someone who was more than a casual acquaintance. The Petitioner briefly explains that the perpetrator paid the Petitioner's daughter's bills while she was living with the Petitioner and visited his home during their relationship, indicating that he was a household member. The Petitioner also explains that he and the perpetrator spoke on the phone multiple times and had multiple interactions, making them more than casual acquaintances and indicating that they had an intimate relationship. As such, the Petitioner asserts that he meets the definition of family violence pursuant to section 71.004 of the Tex. Fam. Code Ann.

The Petitioner contends that he was also the victim of stalking, defined in section 42.072(a) of the Tex. Penal Code Ann. The Petitioner asserts that law enforcement detected and investigated stalking as perpetrated against him in 2011 when the perpetrator threatened him with an AK-47. He points out that the Affidavit for Warrant of Arrest notes his daughter's statements "that each time she tried to break up with [the perpetrator] in the past[,] he would threaten to harm himself or one of her family members" and the 2015 Supplement B specifically indicated that the perpetrator "had issued threats of harm" to the Petitioner, showing an acknowledgement that he had made threats in the past and that there was more than one threat made. Further, the Petitioner indicates that, not only had the perpetrator made verbal threats to his life in the past (though not reported to police), but the same night of the incident discussed here, the perpetrator made more than one threat of bodily injury or death directed specifically at the Petitioner. The Petitioner explains that the night of the incident, while the police were interviewing his daughter at his home, he saw a van pass by his house multiple times and he knew it was the perpetrator, which was confirmed by the perpetrator to the Petitioner's daughter the following morning. He contends that those threats constitute more than one occasion in the same scheme or course of conduct, outlined in section 42.072(a) of the Tex. Penal Code Ann., even though they occurred on the same night, because they were distinct acts related by threat and subsequent conduct pursuant to the threat. Finally, the Petitioner contends that there is ample evidence that he is a victim of stalking and that stalking was detected, investigated, and prosecuted, even though stalking was not indicated on the incident report and not checked or specifically cited on the Supplement B.

The Petitioner also submits several of our unpublished decisions to demonstrate that the certifying official is not required to check the box or specifically cite on the Supplement B the qualifying crime of which the Petitioner asserts to be a victim. However, the cited decisions are distinguishable in their application of law and policy to the specific facts, issues, evidence, and records of the individual cases, and are not analogous to the Applicant's stated situation. Regardless, the cited decisions were not published as precedent and, accordingly, do not bind USCIS in future adjudications. *See* 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act"). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

B. Qualifying Criminal Activity Was Not Detected, Investigated, or Prosecuted

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).

The Petitioner has not shown that law enforcement detected, investigated, or prosecuted a qualifying crime committed against him. We acknowledge that, on the Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity "involving or similar to" the qualifying crime of "domestic violence." 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 domestic violence 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").

First, although law enforcement indicated that the crime involved "family violence," we agree with the Director that the family violence component of the crime referred to the Petitioner's daughter who was in a romantic relationship with the perpetrator and not the Petitioner himself. This is further evidenced by the definitions found within the Texas Family Code for "family," "household," "member of a household," and "dating violence." Tex. Fam. Code Ann. § 71.003, .005, .006, and .0021. The Petitioner does not meet the definition of "family" as he is not related to the perpetrator by consanguinity or affinity, as defined at section 71.003 of the Tex. Fam. Code Ann. He does not meet the definition of "member of a household" as he and the perpetrator never resided together in the same dwelling. While the Petitioner claims on appeal that he and the perpetrator were household members because the perpetrator paid his daughter's bills while she was living with the Petitioner and visited his home during their relationship, he has not submitted sufficient evidence to demonstrate that this constitutes "living together in the same dwelling," as defined at section 71.005 of the Tex. Fam. Code Ann. Further, the Petitioner has not submitted any evidence of these assertions made on appeal. The Petitioner also does not meet the definition of "dating violence." The Petitioner claims on appeal that he and the perpetrator had an "intimate" relationship as they were more than casual acquaintances because they spoke on the phone multiple times and had multiple interactions. However, he has not submitted sufficient evidence to demonstrate that multiple interactions and phone calls constitute "a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature," as defined at section 71.0021 of the Tex. Fam. Code Ann. Furthermore, he also has not submitted any evidence of these assertions made on appeal. As such, we agree with the Director that the Petitioner was not a victim of domestic violence as defined by Texas Family Law.

Next, we turn to the Petitioner's assertion that he was the victim of stalking, a qualifying crime. The Petitioner indicates that he received multiple threats of bodily injury or death from the perpetrator over time and further asserts that law enforcement detected and investigated these multiple threats at the time of the incident discussed here. He points out the language in the Affidavit for Warrant of Arrest that stated "each time [his daughter] tried to break up with [the perpetrator] in the past[,] he would threaten to harm himself or one of her family members," and the 2015 Supplement B, which stated that the perpetrator "had issued threats of harm," indicating that the certifying official acknowledged the past threats of bodily injury or death to the Petitioner. However, the language in the Affidavit for Warrant of Arrest generally stated that the perpetrator threatened the daughter's "family members" and not the Petitioner specifically and the certifying official's use of the plural "threats" is not sufficient to demonstrate that law enforcement detected, investigated, or prosecuted the qualifying crime of stalking based on the past threats claimed by the Petitioner. This is further evidenced by the fact that the certifying official did not provide the statutory citation for stalking and did not indicate that the Petitioner was the victim of stalking on either Supplements B. Further, the Petitioner indicates that the same night of the incident discussed here the perpetrator made more than one threat of bodily injury or death specifically directed at him when he drove past his home several times while the police were interviewing his daughter at the home, which indicates threats made on more than one occasion

in the same scheme or course of conduct, outlined in section 42.072(a) of the Tex. Penal Code Ann. However, the incident report does not indicate that the Petitioner called attention to, or law enforcement detected, the perpetrator's continued threats by driving by his home while police were present. In fact, the incident report indicates that the Petitioner's daughter received multiple phone calls and text messages from the perpetrator, while the police were present and conducting her interview, claiming he was intoxicated, "blam[ing] his threat on the alcohol," and "stating he was joking about killing her father." At no time does the incident report or the certifying official acknowledge or indicate that law enforcement detected, investigated, or prosecuted the crime of stalking. As such, the evidence does not indicate that stalking was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Instead, the documents indicate that the only offense the certifying agency detected, investigated, and prosecuted as perpetrated against the Petitioner was a terroristic threat under section 22.07 of the Tex. Fam. Code Ann.

Accordingly, the Petitioner has not demonstrated that he was a victim of any qualifying crime or "any similar activity" to the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

C. The Remaining Eligibility Criteria for U-1 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 a qualifying criminal activity. Because the Petitioner has not established that he was the victim of a qualifying criminal activity or a crime substantially similar to a qualifying criminal activity, he necessarily cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not established that he was the victim of a qualifying criminal activity, or a crime involving or substantially similar to a qualifying criminal activity. Consequently, the Petitioner is not eligible for U nonimmigrant status.

ORDER: The appeal is dismissed.