U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29160344

Date: NOV. 17, 2023

Appeal of Vermont 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 Vermont Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the record did not establish that he was a victim of qualifying criminal activity or a crime involving or substantially similar to a 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 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

The Petitioner filed his Form I-918 in 2016 with a Supplement B signed and certified in 2016 by an officer in the [redacted] Police Department (certifying official) in [redacted] New York regarding an incident that occurred in September 2015. 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:", adding "Robbery." The certifying official identified "P.L. 160.10 Robbery" in Part 3.3 as the specific statutory citation for the criminal activity investigated or prosecuted. The Director issued a request for evidence, notifying the Petitioner that the Supplement B was insufficient, as it was not signed by the certifying official within the six months immediately preceding the filing of the Form I-918 as required.

The Petitioner filed a second Supplement B signed and certified in 2022 by a deputy chief in the [redacted] Police Department (certifying official). In response to Part 3.1 of the Supplement B, this certifying official checked the boxes for "Attempt to Commit Any of the Named Crimes," "Conspiracy to Commit Any of the Named Crimes," and "Felonious Assault." The certifying official identified "PENAL LAW 160.10 ROBBERY AND 120.05 ASSAULT" in Part 3.3 as the specific statutory citations for the criminal activity investigated or prosecuted. When asked in Part 3.5 to describe the criminal activity being investigated, the certifying official stated that the applicant was a victim of a robbery and felony assault.

The Petitioner also included an investigative report reflecting that law enforcement responded to a crime classified as a "ROBBERY" where three perpetrators entered the Petitioner's location, displayed a handgun, and demanded that he "give [them] everything." The report states that the Petitioner gave the perpetrators money and they fled.

The Director denied the Petitioner's Form I-918 concluding that the Petitioner was the victim of robbery under section 160.15 of the New York Penal Law (NYPL) but that it was not a qualifying crime nor substantially similar to the qualifying crime of second-degree felonious assault under section 120.05 of the NYPL.

On appeal, the Petitioner claims the Director's decision finding that he was not the victim of qualifying criminal activity was erroneous in law and fact, in part, because evidence clearly showed he was

[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.

robbed at gunpoint and the Director failed to provide an explanation as to how being robbed at gunpoint did not constitute a qualifying crime such as unlawful criminal restraint or being held hostage. The Petitioner does not identify any error or make any argument regarding the Director's decision that robbery was not substantially similar to second-degree felony assault.

As stated above, the Act requires that petitioners have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting qualifying criminal activity as certified on a Supplement B from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term "investigation or prosecution" of a 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 . . . .").

Here, the Supplement B, when read as a whole and in conjunction with other evidence in the record, establishes that law enforcement detected, investigated, or prosecuted a robbery, which is not one of the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act. In particular, the certifying official in the initial Supplement B, issued less than 10 months after the incident, certified only robbery under section 160.10 of the NYPL as the crime investigated or prosecuted and described that the Petitioner was the victim of a robbery. This is consistent with the investigative report reflecting that law enforcement responded to a crime classified as a "ROBBERY," as well as the criminal activity certified as being investigated in the 2022 Supplement B.

We acknowledge that the certifying official also certified that the Petitioner was the victim of a felonious assault in Part 3.1 of the 2022 Supplement B and that felonious assault pursuant to section 120.05 of the NYPL was investigated or prosecuted. However, a certifying official's completion of the Supplement B is not conclusory evidence that a petitioner is or was the victim of qualifying criminal activity. *See* Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4) (providing that USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence). And when the 2022 Supplement B is read in conjunction with other evidence in the record, it does not establish that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. Notably, the initial Supplement B indicates that the only crime detected, investigated or prosecuted as perpetrated against the Petitioner was robbery. Furthermore, while the second Supplement B includes additional conclusory language that the Petitioner was the victim of robbery *and* felony assault, the additional language does not change the description of the robbery as outlined in both Supplements B and the investigative report. Despite the inconsistency, the record does not contain a statement from the certifying agency or other relevant evidence to explain why felonious assault and the citation to section 120.05 of the NYPL was added to the second Supplement B more than six years after the initial Supplement B was certified by the same law enforcement agency. Finally, we note that second-degree assault in New York, at the time of the robbery, generally required, in part, that a perpetrator cause physical injury. *See*, e.g., NYPL § 120.05

(stating a person is guilty of assault in the second degree when "[w]ith intent to cause serious *physical injury* to another person, [a person] *causes such injury* to such person or to a third person).[2] And in this case, both Supplements B specifically indicate that there were no injuries reported and the investigative report similarly does not reference any physical injuries to the Petitioner as having been detected. Consequently, the certifying official's inclusion of felonious assault and reference to section 120.05 of the NYPL in the Supplement B by itself is insufficient to establish that law enforcement detected, investigated, or prosecuted a felonious assault.

Additionally, as noted above, the Petitioner claims evidence clearly shows he was robbed at gunpoint but the Director failed to provide an explanation as to how this did not constitute a qualifying crime such as unlawful criminal restraint or being held hostage. Qualifying criminal activity may occur during the commission of non-qualifying criminal activity. However, 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 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 (emphasis added). Here, as stated above, the Petitioner has not established by a preponderance of the evidence that the certifying agency detected, investigated felonious assault under New York law. Similarly, while the qualifying crimes of unlawful criminal restraint or being held hostage may have been perpetrated against the Petitioner, as he asserts, the certifying official did not check either of the boxes in Part 3.1 of either Supplement B indicating that the Petitioner was the victim of these criminal activities nor did they provide a statutory citation to any provision of New York law referencing criminal restraint or hostage taking as having been investigated. Accordingly, the record as a whole does not establish that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault, unlawful criminal restraint, or being held hostage as having been perpetrated against him, and he does not assert on appeal that the robbery offense detected is substantially similar to those qualifying crimes. He therefore has not established that he is the victim of qualifying criminal activity.

III. CONCLUSION

The Petitioner has not established he was the victim of a qualifying criminal activity. 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 that was investigated or prosecuted by law enforcement.[3] As the Petitioner has not established that he was the victim of a

[2] An exception to this requirement is found in section 120.05(5) of the NYPL where a person can be found guilty for causing injury, but alternatively need only intentionally cause "stupor, unconsciousness or other physical impairment" by administering a drug.

[3] The Petitioner asserts on appeal that the Director made no reference to a psychological report in its discussion of substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. As noted above, however, whether someone suffers substantial physical or mental abuse is dependent on being the victim of a qualifying criminal activity. As the Form I-918 was denied on the basis that the Petitioner is not the victim of a qualifying criminal activity, the Director properly concluded that the Petitioner therefore necessarily did not establish the requisite substantial physical or mental abuse.

qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act and we will dismiss his appeal.

ORDER: The appeal is dismissed.