U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28125111

Date: NOV. 17, 2023

Appeal of Vermont 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), as a victim of qualifying criminal activity.

The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner was not a victim of 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.

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 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

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in July 2016. In the underlying record, the Petitioner submitted a Supplement B, certified in March 2016 by the Commanding Officer of the Domestic Violence Unit (certifying official), [redacted] Police Department (certifying agency). 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" and wrote "Robbery," leaving the box for "Felonious Assault" unchecked. In Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying official wrote "P.L. 160.10 Robbery." In Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, the certifying official wrote: "[v]ictim states that unknown male perpetrator did approach him, grab his shirt, and take his property. Perpetrator fled on foot south bound on [redacted]." The Petitioner included a 2004 police report indicating that he was riding his bike and was robbed by a single individual. The police report states that force was used, that the incident was not gang-related, and recounts that a man grabbed the Petitioner's shirt and took his property but specifies that no weapons were involved and no injuries resulted. The Petitioner claimed that the offense of robbery in the second degree is substantially similar to felonious assault as defined by federal law.

The Director denied the U petition, concluding that: (1) the Petitioner was the victim of robbery in the second degree in violation of section 160.10 of the New York Penal Law (N.Y. Penal Law); (2) robbery in the second degree is not a qualifying criminal activity; and (3) robbery in the second degree under New York law is not substantially similar to second-degree assault under section 120.05 of the N.Y. Penal Law, as the Petitioner claimed. The Director also concluded that the crime of felonious assault was not otherwise detected, investigated, or prosecuted by law enforcement, and that the Petitioner's statements to USCIS in the context of his U petition regarding the details of the robbery were inconsistent with the information reflected in the Supplement B and the 2004 police 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.

Specifically, the Petitioner claimed in a 2016 statement accompanying his U Petition that he was surrounded by a group of individuals, possibly a gang, and that they pointed a knife at him during the robbery, whereas the police report from 2004 indicates that only one person robbed the Petitioner, the incident was not gang-related, and no weapons were involved, consistent with the information contained in the certified Supplement B.

On appeal, the Petitioner argues that the Director erred in concluding that law enforcement did not detect, investigate, or prosecute, and that he was not the victim of, the qualifying crime of felonious assault. He contends that the Director overlooked facts showing that he was the victim of criminal activity involving or similar to the qualifying crime of felonious assault or, at least, attempted assault, and further claims that the 2004 police report was a skeleton document that could have been developed by future investigators. Specifically, the Petitioner claims that because the 2004 police report states that physical force was used, injuries could have resulted, and this information might have developed if the police had continued to investigate the incident. The Petitioner submits a new personal statement on appeal in which he again claims that he was surrounded by many individuals and threatened with a weapon, and contends that robbery under section 160.10 of the N.Y. Penal Law requires there to have been a physical injury or display of a weapon.

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

The Act requires U petitioners 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," 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 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). Although 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 . . . .").

The Petitioner does not dispute, in his brief on appeal, that the Supplement B and 2004 police report reflect that robbery in the second degree under section 160.10 of the N.Y. Penal Law was the statute detected and investigated as perpetrated against him. Instead, the Petitioner asserts that although "the police [report] could have been more specific and also classified the crime as an attempted robbery or the included crime of attempted assault," his "victim statement documents the harm suffered." The Petitioner's assertion is unavailing because evidence describing what may appear to be, or hypothetically could have been investigated or charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence indicating, by a preponderance of the evidence, that relevant law enforcement authorities in fact detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of

the Act; 8 C.F.R. § 214.14(a)(2), (a)(9), (b)(3). While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by law enforcement as perpetrated against the petitioner. *See id.*

Here, the Petitioner's statements to USCIS contain new elements of the robbery that he claims show that the 2004 offense is substantially similar to felonious assault or attempted felonious assault (i.e., he was surrounded by a group of individuals and one brandished a knife), these elements are not reflected in, and are inconsistent with, the contemporaneous police report from 2004 and the Petitioner has not submitted evidence from any law enforcement agency that would support his additional and inconsistent claims. Consequently, the Petitioner's claims regarding the additional circumstances of the crime do not carry more weight than the information as reflected in the documents from the certifying law enforcement agency.

As noted above, the certifying official indicated on the Supplement B that the Petitioner was the victim of the criminal activity of robbery and cited to only felony robbery in the second degree under section 160.10 of the N.Y. Penal Law as the statute detected and investigated as perpetrated against him. At no point does the Supplement B cite to or reference any sort of felonious assault. Similarly, the police report does not reference or otherwise indicate that the offenses of felony assault in the second degree or attempted felony assault in the second degree under New York law were at any time detected, investigated, or prosecuted as perpetrated against the Petitioner. As a consequence, contrary to the assertions of the Petitioner on appeal, he has not established, by a preponderance of the evidence, that the offenses of a second-degree assault or attempted second-degree assault under sections 120.05 of the N.Y. Penal Law were at any time detected, investigated, or prosecuted by law enforcement as perpetrated against him. Instead, the record reflects that law enforcement detected and investigated robbery under New York law as the crime perpetrated against the Petitioner.

C. Robbery Under New York Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner also contends that he was the victim of qualifying criminal activity because the nature and elements of second-degree robbery under New York law are substantially similar to those of felonious assault under New York 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).

The record establishes, and the Petitioner does not dispute, that he was a victim of robbery pursuant to section 160.10 of the N.Y. Penal Law as the crime detected and investigated in this case and that it is not listed as a qualifying criminal activity in section 101(a)(15)(U)(iii) of the Act. Although the Petitioner asserts robbery is substantially similar to felonious assault in part because, he now claims to USCIS, a knife was involved and a group of perpetrators surrounded him, the proper inquiry is not an analysis of the claimed factual details underlying the criminal activity, but a comparison of the "nature and elements" of the crime that was investigated with a qualifying crime. *See* 8 C.F.R. § 214.14(a)(9) (describing the process to determine similarities between two statutes). As such, the Petitioner's assertion that section 160.10 of the N.Y. Penal Law is substantially similar to felonious assault due to his claimed factual circumstances is insufficient to establish that robbery is substantially similar to felonious assault under New York law.

The Petitioner argues that the equivalent crime to felonious assault in New York is assault in the second degree, N.Y. Penal Law § 120.05, which provides that a person is guilty of assault in the second degree, a Class D felony, when, "[w]ith intent to cause serious physical injury to another person, he causes such injury to such person or to a third person..." N.Y. Penal Law § 120.05(1) (McKinney 2004). In contrast, section 160.10(1) of the N.Y. Penal Law states that a person is guilty of robbery in the second degree, a Class C felony, "when he forcibly steals property and when . . . [h]e is aided by another person actually present." N.Y. Penal Law § 160.10(1) (McKinney 2004). In addition, section 160.10(2)(b) of the N.Y. Penal Law states that a person is guilty of robbery in the second degree, a Class C felony, "when he forcibly steals property and when . . . in the course of commission of the crime or of immediate flight therefrom, he or another participant in the crime . . . [d]isplays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm," N.Y. Penal Law § 160.10(2)(b) (McKinney 2004).

The elements of robbery in the second degree under section 160.10 of the N.Y. Penal Law are distinct from those of felony-level assault in New York. The statute investigated and prosecuted in this case involves the stealing of property of another by force, and does not specify the intent to cause, or the actual causing of, physical injury to another person. Moreover, New York law specifically recognizes that the acts constituting a robbery are separate and distinct from the acts constituting an assault, each requiring different intent. The crime of second-degree assault is committed with the intent to cause physical injury, not the intent to take property that is required for robbery. S*ee People v. Murray,* 749 N.Y.S.2d 411 (2002); *People v. Hayes*, 84 A.D.3d 463, 464, 922 N.Y.S.2d 79, 80 (2011) (noting that consecutive sentences are proper for separate and distinct acts which violate more than one section of the Penal Law, even if such acts are part of a 'continuous course of activity). Accordingly, the Petitioner has not established that the criminal activity of which he was a victim, robbery in the second

degree under N.Y. Penal Law section 160.10, is substantially similar to felonious assault under N.Y. Penal Law section 120.05, or even attempted assault, as he claims.

For the above reasons, the Petitioner has not established on appeal that the criminal activity of which he was a victim, robbery in the second degree under section 160.10 of the N.Y. Penal Law, involves or is substantially similar to felonious assault under New York law.

III. CONCLUSION

The Petitioner has not demonstrated that he was the victim of a qualifying crime or an offense that is substantially similar to a qualifying crime. 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 he was the victim of qualifying criminal activity, he necessarily cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.