U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28566864

Date: OCT. 20, 2023

Appeal of Nebraska 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 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 and suffered substantial mental or physical abuse as a result. The Director also denied the Petitioner's subsequent combined motion to reopen and reconsider. 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, a petitioner 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, are being, 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). 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).

As required initial evidence, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioner's 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 the petitioner 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 her U petition in 2016 along with a Supplement B signed and certified by an Assistant District Attorney[2] of [redacted] Wisconsin (certifying official). In response to Part 3.1 of the Supplement B, the certifying official indicated that the Petitioner was the victim of criminal activity involving or similar to felonious assault, attempt to commit any of the named crimes, and "Other: RECKLESS ENDANGERM[E]NT." In response to Part 3.3, which requests the specific statutory citations for the criminal activity investigated or prosecuted, the certifying official listed Wisconsin Statutes sections 943.03 (arson of property other than building), 941.30 (recklessly endangering safety), 940.19 (battery; substantial battery; aggravated battery); and 939.32 (attempt). The Supplement B additionally describes the factual basis for the charges, explaining that in the "early morning hours" the suspect set fire to the Petitioner's vehicle, which was parked in her driveway "close enough to warrant [the] evacuation [of the Petitioner and her spouse] from the[ir] home when an officer happened to observe the vehicle on fire." The Supplement B indicates that there were no physical injuries.

After considering the initially filed documentation and the Petitioner's response to a request for evidence (RFE), the Director denied the U petition based on a determination that the Petitioner had not established that she was the victim of qualifying criminal activity and suffered substantial physical or mental abuse as a result. The Director explained that the crime of arson of property other than a building in violation of Wisconsin Statutes section 943.03, which is the only crime listed on the police report relevant to the incident, is not a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. Additionally, the Director noted that the Petitioner had not established that the nature and elements of arson of property other than a building are substantially similar to a qualifying crime. The Director acknowledged that the Supplement B also listed recklessly endangering safety, battery, and attempt as additional crimes investigated or prosecuted in the Petitioner's case but reiterated that the only crime mentioned on the police report was arson of property other than a building in violation of Wisconsin Statutes section 943.03.

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[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.

[2] The Supplement B was accompanied by a letter from the [redacted] District Attorney granting permission for a Deputy or Assistant District Attorney to sign the Supplement B.

Furthermore, the Director concluded that the Petitioner had not shown that she suffered substantial physical or mental abuse as a result of the crime because the evidence indicates that the fire to her vehicle was a random act rather than a targeted threat. The Director also pointed out that the clinical notes the Petitioner submitted from a psychologist stated that the Petitioner "appeared primarily motivated for documentation from providers for her attorney to support U visa application related to this crime."

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

The Act requires U petitioners to demonstrate their helpfulness 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 . . . 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, 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 . . . .").

On appeal, the Petitioner argues that the Director did not consider her evidence and arguments in support of her combined motion to reopen and reconsider before the Director, which also referenced prior arguments she made in response to the Director's RFE. She further asserts that the factual circumstances of the intentional arson of a vehicle parked next to the home where she and her spouse slept were so serious that the crime should be recognized as "more than mere arson of a car." She contends that the certifying official acknowledged the severity of the incident by identifying reckless endangerment[3] and attempted felony battery as additional detected crimes on the Supplement B. Also, she states that she has submitted sufficient evidence to show substantial mental harm she has suffered as a result of the crime.

We acknowledge the severity of the incident the Petitioner experienced and the fear she may have suffered during or as a result of the crime. The Petitioner's statement indicates that she and her spouse were asleep in their home when they heard knocking at their window and door. When they opened the door, they found a police officer who asked them who was in the home and told them to evacuate because their car was on fire. The Petitioner and her spouse were not harmed, but they feared for their safety and noted that their children, who happened to be away at a friend's that night, also could have been at risk. She noted that she was unaware of the motive of the perpetrator and began to fear for her family's safety after the incident. The police report related to the incident show that it was an intentional arson of the vehicle.

[3] Although the Petitioner argues that reckless endangerment was detected, investigated, or prosecuted in her case, which the record does not support, it also is not a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act.

In her brief in support of her motion before the Director, the Petitioner argued that the factual circumstances of the crime support a finding that reckless endangerment and felony battery were detected in this case because the police "thought the risk of harm to the victim serious enough to wake her up and have her evacuate from her house," and the situation was "unusual and suspicious enough to indicate the attacker wanted to cause harm to people in the household." Although she acknowledged that the prosecutor "did not deem these criminal activities sufficiently supported to bring before a jury to adjudicate guilt beyond a reasonable doubt," she argued that the fact that the certifying official listed them on the Supplement B shows "they did see these crimes and believe they happened . . . ." 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 a 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)(l 5)(U)(i)(III) and 214(p)(1) of the Act. As discussed, although 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 the certifying agency as perpetrated against the petitioner. *See id.*

We acknowledge that Part 3.1 of the Supplement B indicates that the Petitioner was the victim of criminal activity involving or similar to the qualifying crime of felonious assault and attempt to commit a named crime, in addition to reckless endangerment, and that in Part 3.3 the certifying official cited Wisconsin laws relating to recklessly endangering safety, battery, and attempt. However, the Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault or attempt to commit a named crime as perpetrated against the Petitioner. *See* 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").

Beyond the checked boxes and citations to Wisconsin law relating to recklessly endangering safety, battery, and attempt to commit a qualifying crime, the certifying official did not reference the crime of felonious assault or any other qualifying criminal activity as perpetrated against the Petitioner elsewhere in the Supplement B. The Supplement B notes that the perpetrator set fire to the Petitioner's vehicle, requiring their evacuation due to the vehicle's proximity to their residence. The accompanying police report, produced shortly after the criminal activity occurred, did not identify any type of assault or battery, attempted or otherwise, as perpetrated against the Petitioner; instead, it stated that the "Incident Type" was "Fire Investigation-Arson" and identified the offense committed as arson of property other than a building in violation of Wisconsin Statutes section 943.03. The three narratives attached to the police report likewise did not reference any assault, battery, or other offense against the Petitioner, but instead stated that police observed a parked vehicle on fire in front of the Petitioner's home and asked the Petitioner and her spouse to evacuate their residence until the fire department extinguished the fire. Afterward, investigators noted heavy fire damage to the "driver's side rear quarter panel" and gas tank of the vehicle. Similarly, the summary of charges from the Wisconsin Circuit Court indicates that the perpetrator was charged with five counts of arson of property other than a building in violation of Wisconsin Statutes section 943.03. The perpetrator was subsequently convicted of one count of felony arson of property other than a building under Wisconsin Statutes section 943.03 and one count of misdemeanor attempted arson of property other than a

building under Wisconsin Statutes sections 943.03 and 939.32. The court records do not indicate that any other crimes were detected, investigated, or prosecuted. The record also contains a victim impact statement from the Petitioner's spouse, who stated that police woke him and the Petitioner and told them to evacuate their home because their car was on fire and that the incident caused ongoing fear for their safety. The Petitioner's spouse did not describe any assault or other qualifying crimes. The Petitioner notes in her brief in support of her motion before the Director that "[w]hat is most valuable in a police report is not how an officer classifies a case, nor which statutes they pick to mention; it is the statements of witnesses, the observations of the officer, the evidence catalogued." In this case, all those factors point to arson of property other than a building under Wisconsin Statutes section 943.03 as the only crime that was detected, investigated, and prosecuted.

As a result, and as outlined in the Director's decision, the Supplement B's checked boxes and citation to felonious assault, attempt to commit qualifying crimes, and reckless endangerment are inconsistent with the information outlined in the remainder of the document and with the police report and Wisconsin Circuit Court records. The Petitioner has not concretely addressed or submitted any additional evidence relevant to these inconsistencies or otherwise established that law enforcement detected, investigated, or prosecuted felonious assault or attempt to commit any qualifying crime after initially classifying, describing, and prosecuting the offense solely as arson of property other than a building. In her brief in support of her motion before the Director, the Petitioner argued that the certifying official who completed the Supplement B was the prosecutor in the case and that their assessment of which crimes were detected or investigated should be given more weight than the related police report, which was completed by a non-lawyer. However, the records from the Wisconsin Circuit Court do not indicate that the prosecutor charged the perpetrator with any qualifying crimes; instead, as stated above, the defendant was charged with five counts of arson of property other than a building and convicted of one count of arson and one count of attempted arson. The evidence in the record does not explain the discrepancy between the police report and the court records, which document the charges against the perpetrator, and the additional crimes listed on the Supplement B.

The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Chawathe*, 25 I&N Dec. at 375. Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault, attempt to commit an enumerated crime, or any other qualifying criminal activity as perpetrated against her. Instead, the preponderance of the evidence indicates that the only crime law enforcement detected, investigated, and prosecuted, and of which she was the victim, was arson of property other than a building – namely, her vehicle.

C. Arson Under Wisconsin Law is not Substantially Similar to a Qualifying Crime

As the Director noted, arson is not a qualifying crime included in section 101(a)(15)(U)(iii) of the Act. Nonetheless, the Petitioner asserts that arson of property other than a building under Wisconsin Statutes section 943.03 is substantially similar to the qualifying crime of attempted 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. 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).

In her brief in response to the Director's RFE, which she references in subsequent filings, the Petitioner states that under Wisconsin law, attempted felonious assault is categorized as battery under Wisconsin Statutes section 940.19. She asserts that battery in Wisconsin becomes a felony if it "causes bodily harm to another by an act done with intent to cause bodily harm to that person or another" and the harm is "either 'substantial' or 'great.'" She contends that the perpetrator of the arson in this case "had the intent to cause the victim serious fire-related injuries which would at least amount to a form of substantial bodily harm, (if not great bodily harm or death)" and such harm would have resulted if the fire had not been extinguished.

However, the Petitioner does not provide substantive analysis to demonstrate, and the evidence does not show, that the nature and elements of arson of property other than a building under Wisconsin Statutes section 943.03 are substantially similar to those of felony battery under Wisconsin Statutes section 940.19. The statute penalizing arson of property other than a building states, "Whoever, by means of fire, intentionally damages any property of another without the person's consent, if the property is not a building and has a value of $100 or more, is guilty of a Class I felony." Wisconsin Statutes section 940.19, which the Petitioner asserts is the relevant statutory equivalent to felonious assault in her case, states that a person who causes bodily harm to another "by an act done with intent to cause bodily harm to that person or another" is guilty of battery. Whether the offense is a misdemeanor or felony depends on the severity of the harm; "bodily harm" is a misdemeanor, while "substantial bodily harm" and "great bodily harm" are felonies. Wis. Stat. § 940.19(1)-(6). Arson of property other than a building under Wisconsin Statutes section 943.03 does not require intent to cause bodily harm to another person, while battery under Wisconsin Statutes section 940.19 does not require intentional damage of the property of another by means of fire. Accordingly, the nature and elements of the two crimes are not substantially similar. Although the factual circumstances of the arson of the Petitioner's vehicle may have caused her to fear a risk of bodily harm, the two statutes are distinct in their elements.

The Petitioner also argues in her brief in response to the Director's RFE that reckless endangering safety under Wisconsin Statutes section 941.30 and attempted battery under section 940.19 are substantially similar to felonious assault in terms of the "mens rea, seriousness of possible harm imposed and level of criminal consequences." On appeal and in her prior motion before the Director, she contends that the Director failed to consider this argument. However, as we discussed above, a

preponderance of the evidence does not show that those crimes were detected, investigated, or prosecuted as having been committed against the Petitioner. Instead, the record shows that the only crime detected, investigated, and prosecuted in this case was arson of property other than a building.

Therefore, the Petitioner has not demonstrated that she 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.

D. 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. Therefore, we acknowledge the evidence the Petitioner has submitted but need not reach and hereby reserve the issue of whether the Petitioner has established that she suffered substantial mental or physical abuse as a result of having been the victim of qualifying criminal activity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not demonstrated that she was a victim of a qualifying criminal activity, as required. Therefore, she cannot satisfy the eligibility criteria for U nonimmigrant status.

ORDER: The appeal is dismissed.