U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28859468

Date: OCTOBER 31, 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 did not establish that he was a victim of the qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that he has established eligibility for the benefit sought.

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

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. Id.

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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. Petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the

qualifying criminal activity.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of 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 History

The Petitioner filed his U petition in 2015 with a Supplement B signed and certified by the Assistant District Attorney for [redacted] County, Georgia (certifying official). The certifying official checked a box on the Supplement B indicating that the Petitioner was the victim of criminal activity involving or similar to "Other: Burglary." The certifying official cited to burglary under section 16-7-1 of the Georgia Code Annotated (Ga. Code Ann.) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity, the certifying official stated that "defendants forced themselves into the home of the victim and left through the same." Statements from the Petitioner and his spouse indicate that the burglary occurred while the Petitioner was at work and his spouse and daughter were at church – the perpetrators fled the home when they saw the Petitioner's spouse and daughter returning to the home.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Director determined that although the Petitioner claimed that burglary is substantially similar to the qualifying criminal act of domestic violence under section 16-5-23 of the Ga. Code Ann., there was no other evidence in the record indicating that law enforcement detected, investigated, or prosecuted domestic violence perpetrated against the Petitioner; in this regard, the certifying official provided only the statutory citation for burglary under Georgia law. The Director then concluded that burglary is not a qualifying crime under the Act and is not substantially similar to any qualifying 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 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

[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.

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 . . . .").

In this case, the Petitioner has not met his burden of establishing by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him. He argues that domestic violence is a U-visa-qualifying crime, and most state statutes do not specify domestic violence as a crime, but instead list crimes that constitute domestic violence, such as harassment, assault, menacing, criminal trespass, burglary, or malicious property damage. However, evidence of 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. Petitioners must establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity "in violation of Federal, State, or local criminal law." Sections 101(a)(15)(U)(i)(III), (iii) 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 the certifying agency as perpetrated against the petitioner. Id. Here, the Petitioner has not submitted into the record any evidence indicating that law enforcement actually detected or investigated any crime involving domestic violence. As such, the Petitioner has not established that law enforcement actually detected, investigated, or prosecuted domestic violence as perpetrated against him. Instead, the record reflects that law enforcement detected or investigated the crime of burglary under Georgia law as having been perpetrated against the Petitioner.

C. Burglary Under Georgia Law is Not Substantially Similar to the Qualifying Crime of Domestic Violence

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).

We note here that while the Petitioner cites to section 16-5-23 of the Ga. Code Ann. as Georgia's domestic violence provision, that section provides the definition for simple battery,[2] including a definition relating to family violence.[3] Georgia's Family Violence Act defines domestic violence as battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, criminal trespass, and/or any felony committed by one household member against another. Ga. Code Ann. § 19-13-30. Conversely, Georgia law provides that:

> a person commits the offense of burglary in the first degree when, without authority and with the intent to commit a felony or theft therein, he or she enters or remains within an occupied, unoccupied, or vacant dwelling house of another or any building, vehicle, railroad car, watercraft, aircraft, or other such structure designed for use as the dwelling of another. A person who commits the offense of burglary in the first degree shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years.

Ga. Code Ann. § 16-7-1. Here, while the burglary of the Petitioner's home was a felony, the evidence does not reflect, and Georgia's statute does not require, that the burglary was committed by a family or household member. Therefore, the Petitioner has not established by a preponderance of the evidence that the nature and elements of the crime of burglary under Georgia law are substantially similar to the state equivalent of domestic or family violence.

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

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that he was a victim of a qualifying crime or any similar activity to a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the Petitioner is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.

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[2] "A person commits the offense of simple battery when they either intentionally make physical contact of an insulting or provoking nature with another person or intentionally causes physical harm to another." Ga. Code Ann. § 16-5-23(a).

[3] "If the offense of simple battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature." Ga. Code Ann. § 16-5-23(f).