U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27988107

Date: SEP. 28, 2023

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity 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 Form I-918, Petition for U Nonimmigrant Status (U petition), and we dismissed the Petitioner's subsequent appeal, concluding that the record did not establish that the Petitioner was the victim of a qualifying crime, or a crime substantially similar to a qualifying criminal activity.[1] The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief from counsel. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As stated in our decision on appeal, 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. 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."

[1] The Director also determined that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime. As we found that the Petitioner did not establish that he was the victim of a qualifying crime, or a crime substantially similar to a qualifying criminal activity, we declined to reach and reserved the Petitioner's appellate arguments on this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 a Petitioner is otherwise ineligible).

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.

"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.*

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in October 2015, accompanied by a Supplement B that was signed and certified by a Detective of the [redacted] Police Department in [redacted] California (certifying official) in May 2015, based on criminal activity committed against the Petitioner in October 2011 and December 2011. In part 3.1 of the Supplement B, the certifying official marked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Other: Battery." At part 3.3, the certifying official cited to section 242 of the California Penal Code (Cal. Penal Code) as the specific statutory citation for the offense investigated or prosecuted as perpetrated against the Petitioner. The October 2011 police report states that it is a "report of battery" and indicates that the perpetrator punched the Petitioner in the face with a closed fist. The December 2011 police report cites to section 243(A) of the Cal. Penal Code,[2] defined as "battery," and indicates that the same perpetrator grabbed the Petitioner by the neck, pushed him to the ground, and began to punch and kick him in the face multiple times, causing visible injury. The report further indicates that the weapon/force/instrument used by the perpetrator was "bodily force."

The Director denied the U petition, concluding that the Petitioner was the victim of battery under section 242 of the Cal. Penal Code, but that section 242 of the Cal. Penal Code was not a qualifying criminal activity and was not substantially similar to a felonious assault in California.

In our prior decision, incorporated here by reference, we determined that the Petitioner did not meet his burden of establishing that battery constitutes a qualifying criminal activity or a crime substantially similar to one, as required by section 101(a)(15)(U)(iii) of the Act. We noted that the Petitioner did not contest that he was the victim of a battery or that battery is not a qualifying criminal activity, but

[2] Section 243(A) of the Cal. Penal Code describes the punishments for different batteries committed under section 242 of the Cal. Penal Code.

instead claimed that the details of a battery against him made it a felonious assault, and that the record established that the Petitioner was also the victim of domestic violence, attempted manslaughter, and attempted murder. First, we concluded that while the Petitioner claimed that the facts associated with one of the incidents, namely that the Petitioner was on the ground and kicked in the face, made the battery a felonious assault, a comparison of the "nature and elements" of the crime that was investigated—battery under section 242 of the Cal. Penal Code —with those of a qualifying crime—felonious assault under section 245 of the Cal. Penal Code—showed that they are not substantially similar. We explained that in comparing the nature and elements of battery to assault, a battery necessarily requires a use of force or violence, whereas an assault only requires an attempt to do so, and battery does not require aggravating factors such as the use of a deadly weapon, firearm, machine gun, or means of force likely to produce great bodily injury. We also concluded that the record had insufficient evidence to establish the Petitioner was the victim of domestic violence, manslaughter, or attempted murder, as he asserted.

B. Motion to Reconsider

In support of his motion to reconsider, the Petitioner submits a brief asserting that we incorrectly applied California law to the facts of his case. The Petitioner states that "the fear he actually suffered was substantially similar to the fear of [section 245 of the Cal. Penal Code] felonious assault with a deadly weapon or force" which came before he was actually injured as a consequence of the assault in the battery. He argues that we failed to consider his "fear of the force from a shod kick in the face" for its palpable potential to injure or kill him as a necessary element to a potential felony assault charge under section 245 of the Cal. Penal Code. The Petitioner asserts that our citation to *People v. Yeats*, 136 Cal. Rptr. 243, 245 (Cal. Ct. App. 1977) "in an attempt to distinguish [his] battery from his fear of the batterer before being kicked in the face," is a "distinction without a difference" and an incorrect application of the law. He further indicates that we incorrectly interpreted the evidence of record by failing to consider his fear, minimizing his injuries, and denying the potential of serious injuries from the criminal activities of the batterer, as well as the batterer's cohabitation in his family's apartment building posing an actual, potential danger.

While we acknowledge the Petitioner's assertions of fear prior to the incident, section 242 of the Cal. Penal Code relates to the commission of a battery, rather than the fear of a potential battery with a deadly weapon or by means of force likely to produce great bodily injury, such as felonious assault under section 245 of the Cal. Penal Code. Here, the actual crime detected, investigated, or prosecuted by law enforcement was battery under section 242 of the Cal. Penal Code, and as previously addressed in detail and incorporated here by reference, battery is not substantially similar to felonious assault under section 245 of the Cal. Penal Code. Regardless of whether the Petitioner feared the perpetrator would commit a felonious assault against him, the evidence must establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime. Absent such evidence, and given that law enforcement, in this case, detected, investigated, or prosecuted the crime of battery under section 242 of the Cal. Penal Code as having been committed against the Petitioner, we necessarily cannot conclude that the Petitioner was the victim of a qualifying criminal activity.

Further, we referenced *People v. Yeats* in an effort to draw a distinction between an assault and a battery, indicating that California courts have similarly held that a battery under section 242 of the Cal. Penal Code is distinguishable from felonious assault under section 245 of the Cal. Penal Code,

because such an assault may be committed without committing a battery. Again, the Petitioner's fear of the perpetrator prior to the incident does not demonstrate that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault in California, as being perpetrated against him, and that he was a victim of said crime, as he asserts.

The Petitioner does not cite any other error in our application of law or USCIS policy in our previous decision, nor does he cite pertinent precedent or adopted decisions that establish our prior decision was in error based on the record at the time. Therefore, the Petitioner has not satisfied the requirements for a motion to reconsider.

III. CONCLUSION

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, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The motion to reconsider is dismissed.