U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34729806

Date: DEC. 19, 2024

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U nonimmigrant classification as a victim of qualifying criminal activity at 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, concluding that the record did not establish that the Petitioner was a victim of qualifying criminal activity. The matter is now before us on appeal pursuant to 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). One qualifying crime under section 101(a)(15)(U)(iii), "felonious assault," must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. *See* section 101(a)(l5)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "felonious assault" when committed "in violation of Federal, State or local criminal law" as a qualifying criminal activity).

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. 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 all petitions for U nonimmigrant status. 8 C.F.R. § 214.14(c)(1). 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 Form I-918 claiming that he was the victim of a qualifying criminal activity perpetrated against him in 2014. With the Form I-918, the Petitioner submitted a Supplement B, signed and certified by the city prosecutor (certifying official) of the [redacted] Legal Department in [redacted] Utah in 2016. The certifying official indicated in Part 3.1 of the Supplement B that the Petitioner was the victim of criminal activity involving or similar to "Other: criminal trespass dwelling." In Part 3.3 of the Supplement B, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying official did not provide a citation. In Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, the certifying official stated that the Petitioner "was at home sleeping when an intoxicated man entered his home and his room, traumatizing him and his family." This account is consistent with the description of the criminal activity in the associated police report, which provides that law enforcement initially responded to a burglary call and then investigated the crimes of "criminal trespass dwelling," and "intoxication." The Director denied the Form I-918 after reviewing sections 76-6-206 and 76-5-304 of the Utah Code Annotated (Utah Code Ann.) corresponding to "criminal trespass" and "unlawful detention and unlawful detention of a minor," respectively, and determined that the record did not establish the Petitioner was the victim of a qualifying crime and therefore was ineligible for U nonimmigrant classification.

On appeal, the Petitioner claims he was the victim of unlawful detention, and that the Director erroneously determined that this crime was not substantially similar to false imprisonment, a qualifying criminal activity. The Petitioner also claims that unlawful detention is substantially similar to false imprisonment as both crimes require a victim to be restrained against their will and are punished as misdemeanors. For the following reasons, however, we find that the Petitioner has not established that he is the victim of a qualifying criminal activity and therefore is ineligible for U nonimmigrant classification.

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

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 . . . .").

Initially, we note that the Petitioner mischaracterizes the Director's decision. The Director did not determine that the Petitioner was the victim of unlawful detention, nor make any determination with regard to whether unlawful detention in Utah was substantially similar to a qualifying criminal activity. Instead, the Director stated that "in totality with the evidence submitted it is determined this event [criminal trespass] is not elevated to be considered as a qualifying crime."

The Petitioner asserts on appeal that the crime indicated on the Supplement B is unlawful detention under section 76-5-304 of the Utah Code Ann., which he concedes is not among the enumerated qualifying criminal activities. However, the record as a whole, including the Supplement B and the police report, does not show that law enforcement detected an unlawful detention offense, or a qualifying criminal activity, as having been perpetrated against the Petitioner. Here, the certifying official did not check any of the boxes for the listed qualifying criminal activities in Part 3.1 of the Supplement B, and instead, checked only the box corresponding to "Other." Further, the certifying official did not add unlawful detention next to "Other" as the crime of which the Petitioner was a victim, and instead, added "criminal trespass dwelling." Additionally, Part 3.3 of the Supplement B, which requests the state statute(s) for the criminal offense detected, investigated, or prosecuted, was left blank and the narrative portions of the Supplement B do not reference unlawful detention as having been detected or investigated. Finally, the associated police report similarly indicates that law enforcement investigated the crime of "criminal trespass dwelling." Neither the Supplement B nor the police report reflect that law enforcement detected, investigated, or prosecuted a crime other than criminal trespass. Criminal trespass is not listed as a qualifying criminal activity in Section 101(a)(15)(iii) of the Act.

To the extent the Petitioner claims that the underlying facts of the criminal activity show that unlawful detention under section 76-5-304 of the Utah Code Ann. was perpetrated against him, 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. As noted above, the Supplement B and the police report establish that criminal trespass was detected and investigated and neither of these documents make any reference to unlawful detention or otherwise indicate that unlawful detention was detected or investigated. Furthermore, despite the Petitioner's claim, the record does not show that the underlying facts of the criminal activity detected is consistent with unlawful detention as having been perpetrated against him. Unlawful detention in Utah requires a person to be detained or restrained.

See Utah Code Ann. § 76-5-304(2)(a). But the police report here states that the perpetrator, who was intoxicated, wandered into the residence and into the Petitioner's bedroom through unlocked doors, believing he was in a friend's residence. Further, it indicates the perpetrator did not act in a threatening manner at all and that the Petitioner "chased the [suspect] from his bedroom out into the attached garage of the home where the suspect then submitted and stopped attempting to flee." The record therefore does not show that law enforcement detected the Petitioner as having been detained or restrained consistent with unlawful detention.

Finally, while we acknowledge that law enforcement initially responded to a report of a burglary, the Petitioner does not claim, nor does the record show, that he was the victim of such offense, and regardless, burglary is not listed as a qualifying criminal activity in Section 101(a)(15)(iii) of the Act. *See* Utah Code Ann. § 76-6-602 (requiring unlawful entry and intent to commit certain other crimes). Accordingly, the record as a whole establishes that the Petitioner is the victim of criminal trespass.

C. Criminal Activity that Involves or Is Substantially Similar to a Qualifying Criminal Activity

The certified offense of criminal trespass in Utah that was detected as perpetrated against the Petitioner is not a qualifying criminal activity. 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.*

The Director did not analyze whether criminal trespass in Utah involved or was substantially similar to another qualifying criminal activity. The Petitioner, however, does not specifically address this issue on appeal or otherwise assert that criminal trespass is substantially similar to a qualifying crime, and therefore we need not reach the issue on appeal. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (holding an issue not raised on appeal is waived); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support).

Instead, the Petitioner asserts on appeal that he is the victim of qualifying criminal activity because he was a victim unlawful detention which he maintains is substantially similar to the qualifying criminal activity of false imprisonment. However, because he has not established that the certifying agency detected, investigated, or prosecuted unlawful detention as having been perpetrated against him, we need not reach this argument.

III. CONCLUSION

The Petitioner has not established by the preponderance of the evidence that he is the victim of a qualifying criminal activity or criminal activity that involves or is substantially similar to one. 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. Because

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 appeal is dismissed.