U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35887690

Date: FEB. 18, 2025

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity pursuant to 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). The matter is now before us on appeal. 8 C.F.R. § 103.3. 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. LEGAL FRAMEWORK

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, and petitioners bear the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, 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)

[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.

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

In November 2017, the Petitioner filed her U petition with a May 2017 Supplement B signed and certified by a commander for the [redacted] Police Department (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Attempt to Commit" and "Conspiracy to Commit" "Felonious Assault" and "False Imprisonment." The certifying official cited to sections 236 (false imprisonment), 240 (assault), 242 (battery) and 245(2)(firearm) of the California Penal Code (Cal. Penal Code) as the specific statutory citations detected, investigated, or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that in [redacted] 2016, "2 male suspects attacked [the Petitioner] and her 2 adult sisters in front of their young children. They were waiting outside a minivan after keys were locked inside. The 2 men punched each adult sister in the face; [the Petitioner] was punched twice. The suspects grabbed [the Petitioner's] purse with $1,000 inside and both suspects fled." With respect to any known or documented injury, the certifying official detailed that the Petitioner "was punched in the face twice by a male attacker in front of her son age 10 and two adult sisters and their kids. One suspect grabbed [the Petitioner's] purse containing $1,000 cash and fled. Both her young son and niece said they saw a suspect start to pull a gun out from under his jacket." Furthermore, the certifying official detailed that after the crime, the Petitioner began to see a therapist to help her cope with nightmares about violence happening to her again in front of her son and other family members. The Petitioner reported to the therapist that "she often wakes at night thinking about the crime and feels trauma-related anxiety that affect her home and work life. She also reported headaches after being struck twice in the head during the crime." The police records accompanying the Supplement B also contain a case narrative and list the crimes investigated as "robbery-all others," a felony under section 212.5(c) of the Cal. Penal Code and "battery on person," a misdemeanor, under section 242 of the Cal. Penal Code. The police records also state that the means of attack was "Simple, Not Aggravated Assault." The police records do not indicate any firearm or deadly weapon was used during the robbery or battery.

In October 2022, the Director issued a request for evidence, requesting, in part, evidence to establish that the Supplement B was signed by an authorized certifying official or alternatively, a newly executed Supplment B signed by a qualified certifying office. In response the Petitioner submitted a November 2022 Supplment B signed and certified by the "commander patrol division acting commander, invest div." of the [redacted] Police Department. The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Attempt to Commit" and "Conspiracy to Commit" "Felonious Assault" and "False Imprisonment." The certifying official cited to sections 236 (false imprisonment), 240 (assault), 242 (battery) and 245(2)(firearm) of the Cal. Penal Code as the specific statutory citations detected, investigated, or prosecuted. The certifying official's description of the criminal activity being investigated or prosecuted was virtually identical to that provided in the May 2017 Supplement B.

In response to the Director's February 2023 intent to deny notice, the Petitioner submitted, in part, an April 2023 letter from the chief of police of the [redacted] Police Department, confirming that the certifying official that signed the November 2022 Supplement B had been specifically designated to issue U nonimmigrant status certifications. The individual also wrote that the crime documented against the Petitioner "can qualify as felonious assault under California Penal Code § 245(a)(4) (great bodily injury)." However, we note that this statement is inconsistent with the certifying officials' citations to section 240 (assault) of the Cal. Penal Code provided in the Supplement Bs and the police records, which served as the basis for the certification of the Supplement Bs.

The Director denied the U petition in June 2024, concluding that the evidence in the record did not "demonstrate the certifying agency investigated any crime other than robbery/battery, which are not a qualifying crime listed in regulation, nor is it substantially similar to a felonious assault or any other qualifying crime listed in the regulation."

In July 2024, the Petitioner submitted the Form I-290B, Notice of Appeal or Motion (Form I-290B), stating that she was filing "an appeal to the Administrative Appeals Office." The Petitioner asserted that she was the victim of qualifying criminal activity, namely felonious assault and false imprisonment, as detailed in the record. She also asserted that the facts established that she suffered a felonious assault and false imprisonment as a matter of law. In August 2024, the Director adjudicated the appeal as a motion to reconsider and concluded that the grounds of denial had not been overcome. The Petitioner subsequently submitted a second Form I-290B, in September 2024, stating that the Director violated 8 C.F.R. § 103.3(a)(2)(iv)[2] by treating the first Form I-290B as a motion to reconsider rather than forwarding the matter to this office, despite the Petitioner's indication on the first Form I-290B that she was requesting an "appeal" of the Director's decision.

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).

At the outset, while we do not diminish the fear the Petitioner may have experienced during, and as a result of, the incident, evidence describing what 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. 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. *See id.*

[2] 8 C.F.R. § 103.3(a)(2)(iv) provides that if the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of processing to this office.

The record demonstrates that "robbery-all others," a felony under section 212.5(c) of the Cal. Penal Code and "battery on person," a misdemeanor, under section 242 of the Cal. Penal Code, were the only crimes detected, investigated, or prosecuted. The police records also state that the means of attack was "Simple, Not Aggravated Assault." California law defines assault as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." Cal. Penal Code § 240 (West 2025). For an assault to be classified as a felony, however, an aggravating factor must be present, such as the use of a deadly weapon or force likely to produce great bodily injury, or an assault against a specific class of persons. *See e.g.*, Cal. Penal Code§§ 244, 244.5, 245, 245.3, 245.5 (West 2025) (outlining aggravating factors, terms of imprisonment, and fines for felonious assaults).

While we acknowledge that in part 3.1 of the Supplement Bs, the certifying officials checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "False Imprisonment," a certifying official's completion of part 3.1 is not conclusive evidence that a petitioner is the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Neither the Supplement Bs nor the police records reference any felony-level assault provision under California law as detected, investigated, or prosecuted as perpetrated against the Petitioner.[3] Nor did the certifying officials cite to California's aggravated assault statute on the Supplement Bs. And, as detailed above, the statement provided by the chief of police of the [redacted] Police Department, stating that the crime documented against the Petitioner can qualify as felonious assault under California Penal Code § 245(a)(4) (great bodily injury) is inconsistent with the certifying officials' citations to section 240 (assault) of the Cal. Penal Code provided in the Supplement Bs and the police records, which served as the basis for the certification of the Supplement Bs. The chief of police does not reference any additional information that was considered for concluding that the added crime of felonious assault under California law was actually detected or investigated in [redacted] 2016 when the incident occurred. Therefore, the Petitioner has not met her burden of establishing, by a preponderance of the evidence, that law enforcement investigated or prosecuted the qualifying crime of felonious assault as occurring against the Petitioner.

Furthermore, the preponderance of the evidence does not show that law enforcement investigated or prosecuted false imprisonment against the Petitioner. While we acknowledge that in part 3.1 of the updated Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment" and referenced 236 (false imprisonment) of the Cal. Penal Code, as explained above, a certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Beyond the checked boxes and citation to California's false imprisonment statute, the certifying official did not reference the crime of false imprisonment as perpetrated against the Petitioner elsewhere in the Supplement Bs. Nor did the accompanying police report reference the detection, investigation, or prosecution of any type of false imprisonment against the Petitioner. As a result, the Supplement B's

[3] On appeal, the Petitioner refers to a July 2023 non-precedent decision where we found that law enforcement had detected, investigated, or prosecuted the qualifying crime of felonious assault. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c).

checked boxes and citation to false imprisonment under California law are inconsistent with the information outlined in the remainder of the document and with the police records, which served as the basis for the Supplement B certification. Therefore, the Petitioner has not met her burden of establishing, by a preponderance of the evidence, that law enforcement investigated or prosecuted the qualifying crime of false imprisonment as occurring against the Petitioner.

Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crimes of felonious assault or false imprisonment. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted robbery and battery under California law.

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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.