U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 19731885

Date: MAR. 02, 2022

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). 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 the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner asserts the Director erred. The Administrative Appeals Office reviews 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, 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 burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners' 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 petitioners 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

The Petitioner filed his U petition in January 2016 with a Supplement B signed and certified by a commander in the administration office of the [redacted] Sheriff's Office (certifying official) in [redacted] California. The certifying official checked a box in part 3.1 of the Supplement B indicating that the Petitioner was the victim of criminal activity involving or similar to "Other:" and in the corresponding space entered "criminal threats." In part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the certifying official cited to "Threaten criminal act with intent to terrorize" (criminal threats) under section 422 of the California Penal Code (Cal. Penal Code). The certifying official indicated that the criminal activity occurred in [redacted] 2014. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official stated that the Petitioner was present when the perpetrator entered a store, robbed the store clerk of cigarettes, and threatened to kill the Petitioner when the Petitioner tried to stop him from leaving the store. The Supplement B indicated that the Petitioner was not physically harmed and referred to the Sherriff's Office report for the incident (incident report) for additional details. The accompanying incident report stated that the perpetrator was charged with robbery under section 211 of the Cal. Penal Code and criminal threats under section 422. The narrative portion of the incident report described the perpetrator robbing a liquor store, threatening the store clerk, and then also threatening to kill the Petitioner when the Petitioner stepped in the perpetrator's way to stop him from leaving. Additionally, per the narrative, the Petitioner stated that when he realized the perpetrator was going to leave the store without paying for the two cigarette packs he had grabbed from behind the counter, the Petitioner grabbed one of the packs and the perpetrator responded by clenching both his fists, raising them as if he was going to punch the Petitioner, and stating, "I am bigger than you. I will kill you." The Petitioner also submitted a personal statement with a description of the criminal activity that was consistent with the incident report and Supplement B.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity because the crime certified on the Supplement B, criminal threats, is not one of the statutorily enumerated qualifying crimes and is not substantially similar to any of them. The Director also found that the Petitioner necessarily did not satisfy the other remaining statutory criteria for eligibility for U nonimmigrant status because he had not established the predicate requirement that he was a victim of a qualifying crime.

On appeal, in a statement submitted with his form I-290B, Notice of Appeal or Motion, the Petitioner asserts only that the Director committed legal error by relying only on the list of enumerated qualifying crimes and contends that the Director's "decision clearly ignores the fact that [the Supplement B] . . .

[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.

provided a box for Other Crimes."[2] Our review of the record does not support this assertion. Contrary to the Petitioner's assertion, the record indicates that in concluding that the Petitioner was not the victim of a qualifying crime, the Director considered the record as a whole, including not only the checked box for "Other Crimes" at part 3.1 of the Supplement B certifying the Petitioner as a victim of criminal activity involving or similar to criminal threats, but also the citation at part 3.3 to section 422 of the Cal. Penal Code corresponding to that offense as having been investigated and the underlying police reports indicating that the Petitioner was a victim of criminal threats.[3] Neither the Supplement B nor the police report reflect that the certifying agency detected, investigated, or prosecuted a felony assault perpetrated against the Petitioner, as he had asserted below. Accordingly, the Director correctly determined that the record demonstrated that the Petitioner was a victim of criminal threats, which is not among the 28 qualifying criminal activities set forth in section 101(a)(15)(U)(iii) that serve as a basis for a U petition. *See also* 8 C.F.R. § 214.14(a)(9) (setting forth the qualifying criminal activities). Additionally, the Director recognized that non-qualifying crimes may be sufficient to establish eligibility as a U nonimmigrant if they are substantially similar to a qualifying crime, but properly concluded that the criminal threats offense detected as perpetrated against the Petitioner is not substantially similar to the qualifying crime of felonious assault in California.

The Petitioner does not provide any further arguments on appeal as to why these findings by the Director are erroneous or otherwise cite to any other errors in the Director's decision. He also does not specifically contest the Director's findings that he was not a victim of the qualifying crime of felonious assault and that the certified offense detected, criminal threats, is not substantially similar to felonious assault or any of the other enumerated qualifying criminal activities.

Therefore, the Petitioner has not overcome the Director's finding that he did not establish that he was the victim of qualifying criminal activity. He is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

**ORDER:** The appeal is dismissed.

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[2] The Petitioner indicated on the Form I-290B that he would provide a brief and/or additional evidence in support of his appeal within 30 calendar days of filing this appeal. However, to date, we have not received an appeal brief or additional evidence in support of his appeal.

[3] We observe that the police report reflects that the certifying agency detected and investigated the offenses of both criminal threats and robbery. However, the certifying agency did not certify the Petitioner as a victim of robbery in the Supplement B or cite to the statute for that offense as having been detected. investigated, or prosecuted as perpetrated against the Petitioner. The Petitioner does not assert on appeal that he was also the victim of the robbery and that robbery is substantially similar to felonious assault or any of the other enumerated qualifying crimes. We therefore do not reach the issue.