U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19809221

Date: MAR. 3, 2022

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 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal. On appeal, the Petitioner asserts his eligibility for U nonimmigrant status and submits additional evidence. We review the questions in this matter *de novo*. See *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

A. Relevant Evidence and Procedural History

The Petitioner filed his U petition in 2015 based on a criminal incident in which he was punched in a public parking lot earlier that same year. The Petitioner submitted a Supplement B certified by an officer with the [redacted] Police Department in [redacted] North Carolina (certifying official). In the Supplement B, the certifying official checked the box in part 3.1 indicating that the Petitioner was a victim of activity involving or similar to "felonious assault". In part 3.3, the certifying official did not cite to any North Carolina statutory provision when prompted to provide the specific statutory citation for the criminal activity investigated or prosecuted. In the narrative portion of the Supplement B, the certifying official explained that the Petitioner had been punched multiple times by a stranger while he was at a laundromat, which resulted in a cut requiring emergency medical treatment and several stitches. The police investigative report attached to the Supplement B was also completed by the certifying official and sets forth an account of the incident consistent with the description in the Supplement B. The report also indicates that further investigation would take or was taking place and that law enforcement was still looking for the owner of the vehicle the perpetrator had been driving.

In 2020, the Director issued a request for evidence (RFE), noting deficiencies in the Supplement B and requesting that the Petitioner also submit additional evidence to demonstrate that he had been the victim of qualifying criminal activity and that he met requirements for helpfulness and possessing information. The Petitioner timely responded to the RFE.

The Director denied the U petition in June 2021, concluding that the Petitioner had not established that he is the victim of a qualifying crime. The Director found that the Petitioner had not submitted sufficient evidence establishing he was the victim of the qualifying criminal activity of felonious assault under section 14-32.4 of the North Carolina General Statutes Annotated (N.C. Gen. Stat. Ann.), as he maintained.[2] The Director further determined that the Petitioner had not established that he

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[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.

[2] The Director also found that the Petitioner had not submitted a properly executed Supplement B and therefore failed to conform to the regulatory requirements per 8 C.F.R. § 214.14(c)(2)(i) because part 3.3 of the Supplement provided did not include the requested statutory citation for the criminal activity investigated or prosecuted. However, neither the cited regulation nor the Act supports the Director's conclusion. U petitioners are required to submit as initial evidence a Supplement B from a certifying agency and signed by a certifying official within six months immediately preceding the filing of the U petition. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B must certify that the petitioner was a victim of qualifying criminal activity that the certifying agency is investigating or prosecuting, possesses

possessed information about qualifying criminal activity or that he was helpful or was likely to be helpful in the investigation or prosecution of qualifying criminal activity.

B. The Petitioner Was Not the Victim of Qualifying Criminal Activity

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

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). 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 . . . .").

On appeal, the Petitioner renews claims that he was the victim of a felonious assault in North Carolina, specifically assault inflicting serious bodily injury, a felony, under section 14-32.4 of the N.C. Gen. Stat. Ann., based on the factual circumstances of the crime and despite the lack of a statutory citation for such crime on the Supplement B as having been investigated or prosecuted. The Petitioner contends that contrary to the Director's finding, the regulations do not contain a requirement that the certifying official provide a statutory citation for a qualifying criminal activity in the Supplement B. The Petitioner further argues that because the criminal activity against him involved an assault, rather than a "technical" crime requiring additional research or discussion with the prosecutor, it is also not reasonable to expect local police officers to provide a criminal statutory citation on the Supplement B.

We find these arguments unavailing. While we acknowledge the Petitioner's arguments for why the Supplement B lacks a statutory citation for a qualifying crime and agree that the lack of such a citation does not render the Supplement B deficient, the Petitioner must still satisfy his burden to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R.

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information about the crime, and "has been, is being, or is likely to be helpful" in the investigation or prosecution of the crime. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Additionally, the signature page of the Supplement B must contain the original signature of the certifying official, as explained in the form's instructions. *See* Instructions for Form I-918, Petition for U Nonimmigrant Status (Form I-918 Instructions), at 4 (Jan. 15, 2013 ed.) (stating that "the signature on the [Supplement B] must be original"); *see also* 8 C.F.R. § 103.2(a)(1) (providing that "[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions" and that a "form's instructions are . . . incorporated into the regulations requiring its submission"). In this case, the Petitioner's Supplement B satisfies these statutory and regulatory requirements. The lack of a statutory citation at part 3.3 for the criminal activity investigated or prosecuted does not render an otherwise properly executed Supplement B deficient.

§ 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, although we do not diminish the harm the Petitioner suffered as a result of the criminal activity 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 eligibility absent evidence that law enforcement actually detected, investigated, or prosecuted a 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; 8 C.F.R. § 214.14(a)(5). In this case, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault under section 14-32.4 of the N.C. Gen. Stat. or any other provision in North Carolina as perpetrated against him, as asserted on appeal.

We acknowledge that in part 3.1 of the Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "felonious assault." However, a certifying official's completion of part 3.1 is not conclusory 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 3.3 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). Here, the Supplement B, when read as a whole and in conjunction with other relevant evidence in the record, does not establish, by a preponderance of the evidence, that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *See* section 214(p)(4) of the Act (stating that, in acting on petitions for U nonimmigrant status, the agency "shall consider any credible evidence relevant to the petition"); 8 C.F.R. § 214.14(c)(4) (stating that the burden "shall be on the petitioner to demonstrate eligibility" and that "USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B"). Part 3.3 of the Supplement B, specifically requesting the citation for the crime investigated or prosecuted, was left blank and does not provide citations to any felony assault offense under North Carolina law. Likewise, the remaining evidence in the record, including the police report, does not cite to or reference section 14-32.4 of the N.C. Gen. Stat. Ann. or any other felony assault provision of North Carolina law.

The Petitioner notes on appeal that certain forms of assault in North Carolina are not codified by statute in order to explain the lack of a felony assault statutory citation in the Supplement B and underlying police report. We acknowledge that the crime of assault in North Carolina, a misdemeanor, is governed by common law rules; there is no statutory definition of assault. *State v. Roberts*, 155 S.E.2d 303, 305 (N.C. 1967); *see also* N.C. Gen. Stat. Ann. § 14-33(b) (West 2015) (classifying assault as a Class 1 misdemeanor unless the conduct is covered by another provision of law providing greater punishment). The North Carolina Supreme Court has defined "the common law offense of assault as 'an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.'" *State v. Roberts*, 155 S.E.2d at 305. Under North Carolina law at the time the offense was committed, a felonious assault required the presence of an aggravating factor, such as the use of a deadly weapon with either the intent to kill or the infliction of serious injury (or both); infliction of "serious bodily injury"; or infliction of physical injury by strangulation. *See* N.C. Gen. Stat. Ann. §§ 14-32, 14-32.4 (West 2015) (various assault offenses rendered felonious based on aggravating factors). However, as the Petitioner himself notes, these felony assault offenses are codified in North Carolina, including assault inflicting serious bodily injury under section 14-32.4 of the N.C. Gen. Stat. Ann., of which he asserts he was a victim. While we acknowledge that the record indicates that law enforcement detected a common law assault in North Carolina as perpetrated against the Petitioner, as discussed, neither the Supplement B nor the police report cite to these or any other statutory felony offense provisions as having been detected, investigated, or prosecuted as having been committed against the Petitioner. The record also lacks evidence that the certifying agency detected the presence of any of the referenced aggravating factors that render an assault a felony under the cited N.C. Gen. Stat. Ann. provisions. Accordingly, the Petitioner has not demonstrated that law enforcement detected assault inflicting serious bodily injury or another felonious assault under North Carolina law.

The Petitioner bears the burden to demonstrate his eligibility for U nonimmigrant classification by a preponderance of the evidence, including that he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Sections 101(a)(15)(U)(i)(III), 214(p)(1), and 291 of the Act; 8 C.F.R. §§ 214.14(a)(5) and (c)(4). Here, he has not met his burden in this regard. As discussed, the record does not establish that the certifying agency detected the qualifying crime of felonious assault under North Carolina law as perpetrated against the Petitioner, as he asserts.

2. Law Enforcement Did Not Investigate, Prosecute, or Detect an Offense Substantially Similar to the Qualifying Crime of Felonious Assault

As stated above, to qualify as a victim for U-1 classification, petitioners must establish that the crime detected, investigated, or prosecuted as perpetrated against them, and of which they are victim, is a qualifying crime or is substantially similar to the qualifying crime. 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 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). 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. *Id.* 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. *See also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner). 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).

The Petitioner alternatively argues on appeal that he is the victim of criminal activity substantially similar to the qualifying crime of felonious assault. As discussed above, the certifying official did not provide a citation to any criminal offense under North Carolina law in the Supplement B, and the remaining evidence in the record likewise does not establish the North Carolina statute or law for the criminal activity that as investigated or prosecuted as perpetrated against the Petitioner. Assuming *arguendo* that the Petitioner has established that law enforcement detected, investigated, or prosecuted a common law assault as perpetrated against him, he nonetheless has not established that common law assault is substantially similar to the qualifying crime of felonious assault under section 14-32.4.

At the time of the incident in question, as discussed above, the North Carolina Supreme Court defined "the common law offense of assault as 'an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.'" *State v. Roberts*, 155 S.E.2d at 305. However, under North Carolina law at the time the offense was committed, felonious assault under section 14-32.4 of the N.C. Gen. Stat. Ann. required the presence of an aggravating factor, specifically the infliction of serious bodily injury which is bodily injury "that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." N.C. Gen. Stat. Ann. § 14-32.4(a) (West 2015). Common law assault does not require the infliction of serious bodily injury as an element of the offense. Further, North Carolina law separately defines assaults punished as felonies as distinct from assaults punished as misdemeanors. Consequently, the nature and elements of common law misdemeanor assault and felonious assault under section 14-32.4 are not substantially similar.

The Petitioner also argues on appeal that he was the victim of an assault because the factual circumstances of the assault rendered it felonious; however, an inquiry into whether the two offenses are substantially similar is not fact-based, but rather entails comparing the nature and elements of the statutes in question. 8 C.F.R. § 214.14(a)(9). Here, as discussed, the nature and elements of the criminal activity detected as perpetrated against the Petitioner are not substantially similar to those of the qualifying crime of felonious assault in North Carolina.

As the record does not establish that the certifying agency detected qualifying criminal activity or criminal activity substantially similar to one of the qualifying crimes, the Petitioner has not demonstrated that he is a victim of a qualifying crime at section 101(a)(15)(U)(iii) of the Act.

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

ORDER: The appeal is dismissed.