U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20597177

Date: MAR. 04, 2022

Appeal of Nebraska 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 Nebraska Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concurrently denied the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application) based on the denial of the U petition. The Petitioner filed an appeal of the Director's decision denying her U petition with our office. On appeal, the Petitioner submits new evidence and a brief. 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 remand the matter to the Director for further proceedings.

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.

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 the 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 the petitioner bears the burden of proof 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 &N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, a petitioner must submit a Form I-918

Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; C.F.R. § 214.14(c)(2)(i). The petitioner 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 a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(i)-(iii). Although a petitioner may submit any relevant, credible evidence for us 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 her U petition in March 2016 based on an incident that occurred in [redacted] 2006. With her U petition, she provided a Supplement B signed and certified in September 2016 by the Chief of Police of the [redacted] Police Department in [redacted] Minnesota (certifying official). In part 3.1 of the Supplement B, the certifying official marked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other," specifying in the provided space, "Crim Veh. Operation." At part 3.3, the certifying official cited to section 609.21.2b.1 of the Minnesota Statutes Annotated (Minn. Stat. Ann.) as the specific statutory offense for the criminal activity investigated or prosecuted. The certifying official described the criminal incident, stating that the Petitioner ran after her family when her brother's car was being robbed. The official indicated that while escaping, the perpetrator ran over her brother with the car and placed her and her entire family at grave risk of substantial bodily harm. When asked to describe any known or documented injury to the Petitioner, the certifying official indicated she suffered emotional harm as a result of the crime. The police report regarding the incident does not identify the Petitioner as a victim or witness to the crime. The report indicated that the incident may have been initially classified as "Theft of Motor Vehicle" and "Aggravated Assault," but those classifications were crossed out and handwritten notes revised the report to note that the incident was instead classified as "MV use w/o consent" and "GM Crim Veh Operation." Nevertheless, the report's description of the criminal activity by the perpetrator was otherwise consistent with the Supplement B description.

The Petitioner's February 2016 personal statement's description of the incident echoed that contained in the Supplement B and police report, adding that she and various members of her family surrounded her brother's car to block it from leaving while her father and brothers tried to regain possession of the car from the perpetrator. However, despite her family surrounding the car, she described the perpetrator looking at all of her family and deciding to back out of their driveway without regard to the risk of harming or running over them. The Petitioner explained the impact of the crime on her life, stating that she was traumatized, could not stop thinking about the event afterwards, truly believed she could have died that day, and suffered substantial emotional harm as a result. She added that she was pregnant at the time which led her to feeling hysterical as she worried for her baby. She detailed how for at least two years after the attack, she had flashbacks that caused her to become tense and her heart to race and stated that her therapist diagnosed her with post-traumatic stress disorder (PTSD). In support of her petition, she also submitted a January 2016 psychological evaluation reflecting that her

PTSD diagnosis was tied to trauma from her witnessing the crime in question. The evaluation also discussed the ongoing effects of the incident on the Petitioner.

In response to the Director's request for additional evidence (RFE) to establish that she was a direct victim of qualifying criminal activity, the Petitioner submitted an updated personal statement signed in March 2021, hospital records relating to her pregnancy, and letters of support from family members who were present with her at the time of the incident. According to the Petitioner's March 2021 statement, seeing the robbery and her brother lying in the road after being run over by the perpetrator caused her stomach to contract and shake uncontrollably while her whole body tensed up and trembled. She stated that because she previously had a failed pregnancy, she was already somewhat concerned about the viability of her pregnancy and the health of her unborn child before the incident occurred. She explained how the physical effects of her emotional trauma during the incident combined with her existing concerns about her pregnancy caused her to worry greatly and to stop sleeping well.

In support of her appeal, the Petitioner submits, among other evidence, two revised Supplement B forms completed in June 2021. The first was signed and certified by the same certifying official as before. The second was signed and certified by the Assistant Criminal Division Chief of the [redacted] Attorney's Office located in [redacted] Minnesota. The two additional Supplement B forms both mark the box under part 3.1 indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault," and at part 3.3, cite to Minn. Stat. Ann. 609.222 as the specific statutory offense investigated or prosecuted, which citation pertains to the offense of assault in the second degree, a felony. Likewise, both forms contain identical descriptions of the criminal activity investigated or prosecuted. The certifying officials state that the Petitioner was "directly present and witnessed, while pregnant, the assault with a deadly weapon causing substantial bodily harm that [the perpetrator] committed" when he tried to steal her brother's vehicle. The certifying officials explain that "by recklessly driving the vehicle without regard to the dangers posed to human life and safety, [the perpetrator] put the [Petitioner and her] entire family at risk of substantial bodily harm." They further note that she suffered psychological harm as a result of the crime and was diagnosed by a psychologist as suffering from PTSD as a result of "directly witnessing this violent crime."

B. Victim of Qualifying Criminal Activity

To establish eligibility for U nonimmigrant classification, petitioners must show that they are victims of qualifying criminal activity. Sections 101(a)(15)(U)(i)(I) of the Act (requiring substantial physical or mental abuse as a result of having been "a victim of [qualifying] criminal activity"). As noted, "victim of qualifying criminal activity" is defined as one "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). The "spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age," are also considered victims of qualifying criminal activity "where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity." 8 C.F.R. § 214.14(a)(14)(i).

Here, the Director found that the crime certified on the Supplement B as having been investigated or prosecuted was criminal vehicular homicide and injury under Minn. Stat. Ann. section 609.21.2b.1. The Director concluded that the Petitioner had not demonstrated that she was the victim of a qualifying crime because the certified crime was not one of the statutorily enumerated qualifying crimes and the Petitioner had not otherwise established that she suffered direct and proximate harm as a result of the commission of qualifying criminal activity. The Director further found that the Petitioner was not a victim of qualifying criminal activity based on her familial relationship to the direct victim, as contemplated by 8 C.F.R. § 214.14(a)(14)(i), because the direct victim of the certified crime, her brother, was not her child.[1] Finally, the Director also determined that the Petitioner had not demonstrated that she was the direct victim of the qualifying crime of felonious assault under Minn. Stat. Ann. section 609.222, as she had asserted in her RFE response, because the record, including the Supplement B and police report, did not establish that law enforcement had detected that offense in their investigation of the incident.

The Petitioner does not contest the Director's determination that she was not a victim of qualifying criminal activity based on her familial relationship to a direct victim of the crime, as contemplated under 8 C.F.R. § 214.14(a)(14)(i). Rather, the Petitioner contests the Director's determination that she did not suffer direct and proximate harm as a result of a qualifying crime. She asserts that she is the victim of qualifying criminal activity in the form of felonious assault because she herself suffered direct and proximate harm, and unusually direct injury, as a bystander to the criminal incident, and submits two updated Supplement B forms in support of her assertions.

As noted above, on the newly submitted Supplement B forms, the certifying officials certified the Petitioner as the victim of felonious assault in part 3.1 and specifically cited to the felony offense of assault in the second degree under Minn. Stat. Ann. section 609.222 as the statutory offense investigated or prosecuted by law enforcement as perpetrated against the Petitioner. Moreover, the certifying officials' description of the events explain why they determined the Petitioner to be a victim of the cited offense and confirm the Petitioner's assertion that she was present when the criminal activity occurred. In denying the petition, the Director's decision specifically relied on the fact that the initial Supplement B did not indicate that the Petitioner was the victim of assault in the second degree or any other felonious assault under Minnesota law. Because the revised Supplement B forms are new evidence materially related to the Director's basis for denying the petition, we will remand the matter for the Director to consider the evidence in the first instance in determining whether the Petitioner has met her burden of establishing that she is a direct victim of qualifying criminal activity and has otherwise satisfied the remaining eligibility criteria for U nonimmigrant status.

III. CONCLUSION

As the Director did not have the opportunity to consider the requested evidence that is before us on appeal, and the evidence is material to the Director's conclusion that the Petitioner had not met the statutory requirements for U nonimmigrant classification, the matter is remanded to the Director to consider this evidence and issue a new decision.[2]

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[1] Although not discussed in the Director's decision, we note that the Petitioner also did not establish she was a victim under 8 C.F.R. § 214.14(a)(14)(i) based on her sibling relationship with the direct victim because the record shows that she was over 18 years of age and married at the time of the incident.

[2] As previously noted, the Director also denied the U petition on the basis that the Petitioner was inadmissible to the United States, which the Petitioner does not contest, and the applicable grounds of inadmissibility have not been waived. However, the Director denied the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

(waiver application), seeking a waiver of her inadmissibility, solely on the basis that her U petition had been denied. As her U petition is being remanded for further consideration and issuance of a new decision, the Director shall reopen and reconsider the waiver application if the Petitioner otherwise demonstrates her eligibility for U nonimmigrant classification.