U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20169070

Date: MAR. 7, 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 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 Nebraska Service Center Director denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition). The denial of the Petitioner's U petition is now before us on appeal. A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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

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. 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) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners

[1] The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of

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

A. Relevant Facts and Procedural History

The Petitioner filed their U petition in March of 2016 accompanied by a Form I-918 Supplement B, U Nonimmigrant Status Certification (first Supplement B). The first Supplement B contains a checked box under Part 3.1 indicating that the Petitioner was the victim of criminal activity involving or similar to "Other" and the certifying official typed hit and run in the available space. Under Part 3.3, the official identifies the statutory citation for the criminal activity being investigated or prosecuted as 625 ILCS 5/11-401. That statute relates to the Illinois law for "motor vehicle accidents involving death or personal injuries" (hit and run). Within the narrative portion characterizing the criminal activity, the official indicates that the police department responded to an incident of hit and run of which the petitioner was a victim. The Petitioner provided a second Supplement B form in response to the Director's request for evidence, and the information in it is almost identical to the first Supplement B except for the checked box in Part 3.1. The certifying official on the second Supplement B checked the box for felonious assault instead of the "Other" box accompanied by "hit and run" that was specified on the first version of the form.

The record also contains a police report that characterizes the offense as a hit and run. The police report reflects that a witness observed a truck travelling past her residence, heard a crash involving the truck and the Petitioner's vehicle, and then saw the truck come to a stop while the Petitioner's car crashed into a fence. The witness observed the individual from the truck exit and run away. The police officer interviewed the Petitioner and she informed them that she was travelling down the street and the truck was traveling from a different direction and struck her on the front passenger side. The officer noted that the truck should have encountered a stop sign in the intersection where he struck the Petitioner's car and that the Petitioner's roadway had no control device at the intersection that might have required her to yield to the truck. The police report also states that the Petitioner requested medical help when the officer arrived on the scene.

The Director noted that neither Supplement B cited to Illinois' aggravated assault or aggravated battery statutes, and even though the second Supplement B contained a checked box for criminal activity involving or similar to felonious assault, the rest of the record did not support that information. The Director concluded that the Petitioner therefore did not establish that she was a victim of qualifying criminal activity, nor did she establish that the crime of which she was a victim was substantially similar to the qualifying criminal activity listed in the statute and the regulation. On appeal, the Petitioner claims law enforcement detected, investigated, or prosecuted a felonious assault in addition

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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.

to a hit and run offense and that the assault as committed against her could have been prosecuted as felony battery.

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

The Act requires U petitioners to demonstrate their helpfulness 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*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (2007 interim rule), 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 . . . .").

In this case, the Petitioner has not met her burden of establishing that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. We acknowledge that the certifying official checked a box on the second Supplement B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault. However, the second Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *See* 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"). Beyond the checked box, the certifying official did not reference the crime of felonious assault as perpetrated against the Petitioner elsewhere in the second Supplement B.

We also note that 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 offenses in Part 3.3 may relate. *See* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). As a result, 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 her. Section 291 of the Act; *Chawathe*, 25 I&N Dec. at 375.

Further, the accompanying police report, produced shortly after the criminal activity occurred, did not identify any type of assault as perpetrated against the Petitioner; instead, it identified the offense committed as a hit and run. The narrative section of the police report likewise did not reference any felonious assault under Illinois law; it described officers responding to a report of a hit and run. As a result, and as noted in the Director's decision, the second Supplement B's checked box for felonious assault under Illinois law is inconsistent with the information outlined in the remainder of the document and with the police report, which served as the basis for the certification of the Supplement B. The Petitioner further argues that she was the victim of a battery with aggravating factors. However, the information in the Supplement B forms and the police report do not support that law enforcement detected, investigated, or prosecuted such an offense as being committed against her.

Additionally, the Petitioner claims she was the victim of an "aggravated assault by motor vehicle or battery by deadly weapon." In support of her position, she again cites to *People v. Hood* and additional state court decisions. The Petitioner also argues that simply because the police department investigated the incident as a hit and run does not preclude the detection of an aggravated assault or an aggravated battery. However, the facts of her case are not analogous to scenarios in those cases due to a lack of intent in her case. While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, *see* 72 Fed. Reg. at 53018, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against a 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 . . . ."). Here, the Petitioner has not adequately addressed or submitted any additional evidence to establish that law enforcement detected, investigated, or prosecuted an aggravated assault or aggravated battery as being committed against her, and a preponderance of the evidence indicates that she was the victim of a hit and run.

C. The Crime Detected, Investigated, or Prosecuted is Not Substantially Similar to a Qualifying Crime

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 such activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. 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 at section 101(a)(15)(U)(iii) of the Act 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).

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. *Id.* 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).

Within the appeal brief, the Petitioner does not offer a comparison between the nature and the elements of the offense that law enforcement detected, investigated, or prosecuted—hit and run—and Illinois' equivalent to a qualifying crime to demonstrate that the two statutes are substantially similar. *See*

8 C.F.R. § 214.14(a)(9). Although the Petitioner discusses Illinois' aggravated assault and aggravated battery statutes and offers state court citations—most of which are not published in the state reporter—relating to those statutes, she does not specify how any state statute equivalent of a qualifying crime is substantially similar in both the nature and elements to the hit and run statute discussed above. The burden to state and explain her claims of eligibility resides with the Petitioner. Section 291 of the Act; *Chawathe*, 25 I&N Dec. at 375. Consequently, the Petitioner has not satisfied her burden to demonstrate eligibility.

D. The Remaining Eligibility Criteria for U-1 Classification

The 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 they were the victim of qualifying criminal activity, or an offense that is substantially similar to a qualifying criminal activity, they necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The record shows that the Petitioner was the unfortunate victim of a hit and run, but this offense is not, does not involve, and is not substantially similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.