U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17403804

Date: APR 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 Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the evidence presented did not establish that the Petitioner was a victim of qualifying criminal activity under the Act. On appeal, the Petitioner submits a brief with supporting evidence and indicates she was a victim of a qualifying crime. 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.

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), which provides 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. Section 214(p)(1) 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 a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii)-(iii).

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, 376 (AAO 2010). 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 the instant U petition in December 2015, with a Supplement B certified by the Chief Prosecuting Attorney in [redacted] Washington, and regarding a crime committed in 2014. In Part 3.1 of the Supplement B, for criminal acts, the certifying official checked the boxes for "Related Crime(s)," and "Other- Witness to Armed Robbery." In Part 3.3, when prompted to provide the specific statutory citation investigated or prosecuted, the certifying official wrote, "RCW 9A.56.200, Robbery in the first degree; RCW 9A.36.011, Assault in the first degree." The description of the criminal activity being investigated at Part 3.5 indicates that, "[a] man robbed a Bank of America in [redacted] WA. The victim…was a key witness. She was one of the few who saw the perpetrator." Part 3.6, which asks for a description of any known or documented injuries to the victim, indicates that the Petitioner, who was pregnant at the time, became so nervous and stressed from having encountered the criminal as well has having to answer police questions about the encounter, that she visited the [redacted] Women's Clinic in [redacted] Washington for her symptoms.

The police report submitted with the U petition provided that the offense investigated was "Robbery." The police report also indicated that Bank of America was the victim of the robbery and the Petitioner was one of two witnesses. The report narrative indicates that police were dispatched to a "bank robbery," and a man, "robbed the bank and implied he had a gun." The narrative explains how the suspect effectuated the robbery by handing a bank teller a note that stated if she followed his directions, no one would be hurt. The police then describe how the Petitioner was the only person other than the teller who saw the suspect. The Petitioner then described the suspect to police and her interaction with him, indicating that he walked by her and said an expletive as he was exiting the bank and she was entering. The Petitioner's statement contains an identical description of this interaction.

The Director denied the petition, stating that the record did not substantiate the claim that the Petitioner was a victim of assault under the Revised Code of Washington (RCW) § 9A.36.011. In addition, the record did not show that robbery under RCW § 9A.56.200 was substantially similar to any of the enumerated crimes, specifically felonious assault, because no intent to inflict great bodily harm was present. The Director also indicated that the Petitioner was a witness to the crime and not a victim. Therefore, the Director concluded that the Petitioner did not establish she was the victim of qualifying criminal activity and denied the petition accordingly.

On appeal, the Petitioner asserts that she was the victim of assault under RCW § 9A.36.011, which is the qualifying criminal activity of felonious assault, and robbery under RCW § 9A.56.200, which is substantially similar to the qualifying criminal activity of felonious assault.

A. Law Enforcement Did Not Detect, Investigate, or Prosecute Felonious Assault 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 . . . .").

We acknowledge that the certifying official cited to RCW § 9A.36.011, assault in the first degree, which is the felonious assault statute in Washington, as one of two statutory citations investigated or prosecuted as perpetrated against the Petitioner. However, this citation, when read in the context of other parts of the Supplement B 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").

RCW § 9A.36.011 provides, in relevant part, that a person commits first degree assault if he or she, "with intent to inflict great bodily harm assaults another with a firearm or any deadly weapon or by any force…likely to produce great bodily harm or death…or assaults another and inflicts great bodily harm." (West 2014)

Here, the facts of the events surrounding the crime as reflected in the police report, the Petitioner's statements in the police report and sections 3.1, 3.5, and 3.6 of the Supplement B do not reflect that assault was investigated or prosecuted. First, in section 3.1 of the Supplement B, the certifying official checked the boxes for "Related Crime(s)," and "Other- Witness to Armed Robbery." This official did not check the box for felonious assault. Second, a felonious assault under Washington law requires an assault and great bodily harm. Here, the record does not show that an assault or great bodily harm was involved in the commission of the crime as perpetrated against the Petitioner. Sections 3.5 and 3.6 of the Supplement B, as well as the police report, indicate that the Petitioner and the perpetrator of the crime had no physical contact, but for the perpetrator walking past the Petitioner to exit the building. Thus, the record does not show there was an assault and that great bodily injury resulted.

Accordingly, and as indicated in the Director's decision, the Supplement B's citation to felonious assault under Washington law is inconsistent with the remainder of the evidence in the record. Again, in these proceedings, the Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Chawathe*, 25 I&N Dec. at 375. Considering the totality of the evidence in the record, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault. Instead, the record indicates that law enforcement detected, investigated, or prosecuted the crime of robbery.

C. Robbery Under Washington Law is Not a Qualifying Crime or Substantially Similar to the Qualifying Crime of Felonious Assault

The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. On appeal, the Petitioner contends that she was the victim of qualifying criminal activity because robbery under RCW § 9A.56.200 is substantially similar to felonious assault under Washington law in that both crimes involve the use of weapons and bodily injury. 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. 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. 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).

In this case, robbery under RCW § 9A.56.190 is defined as the unlawful taking of, "personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone." (West 2014). Under RCW § 9A.56.200, robbery in the first degree occurs when in the commission of a robbery, the suspect "is armed with a deadly weapon," "displays what appears to be a firearm or other deadly weapon," "inflicts bodily injury," or "commits the robbery within or against a financial institution." (West 2014).

As previously stated, RCW § 9A.36.011, which is the felonious assault statute in Washington, provides, in relevant part, that a person commits first degree assault if he or she, "with intent to inflict great bodily harm assaults another with a firearm or any deadly weapon or by any force…likely to produce great bodily harm or death…or assaults another and inflicts great bodily harm." (West 2014)

We acknowledge that robbery in the first degree and assault in the first degree are felony offenses under Washington law. We also acknowledge that robbery under Washington law includes assaultive elements like use of a firearm or infliction of bodily injury. However, the elements of robbery are distinct from those of assault. For example, robbery occurs only in the course of committing a theft, which is not required under Washington's felonious assault provision. More importantly, robbery differs in regard to the requisite level of harm inflicted, requiring only bodily injury whereas assault in the first degree requires great bodily harm. Finally, robbery in Washington differs from felony assault in regard to the intended harm. For instance, in the case of robbery, if bodily injury occurred, it would have been with the intent of committing theft, as opposed to felony assault where the intent of the crime is to inflict great bodily harm. Thus, an assault occurring in the course of committing a robbery and involving only bodily injury, would not be substantially similar to a felonious assault- an assault committed with the intent to inflict great bodily harm. Accordingly, the nature and elements of robbery under RCW § 9A.56.200 are not substantially similar to those of the Washington law felonious assault equivalent under RCW § 9A.36.011. Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that she was a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act.

Because the Petitioner has not established the crime involved is a qualifying criminal activity and this alone is a basis for dismissal, we will not address her assertions regarding her being a bystander victim of the crime who suffered unusual direct injuries. Furthermore, she necessarily cannot satisfy the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

As stated above, 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, 376 (AAO 2010). Here, she has not me that burden.

ORDER: The appeal is dismissed.