U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20596825

Date: APR. 8, 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 Petitioner did not establish that she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief asserting that she was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. 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, 376 (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 Facts and Procedural History

The Petitioner filed her U petition in March 2016 with a Supplement B signed and certified by the sergeant of the Records Division of the [redacted] Police Department in [redacted] Illinois (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other:" and wrote in "Vehicular Hijacking." The certifying official listed chapter 720, section 5/18-3(a) (Vehicular Hijacking) of the Illinois Compiled Statutes Annotated (Ill. Comp. Stat. Ann.) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official stated that, "the [p]etitioner[']s vehicle was taken through the use of force." The certifying official further stated that any known or documented injury to the Petitioner was "unknown." The case supplementary report accompanying the Supplement B identified the incident as a "motor vehicle theft/theft/recovery-automobile." The narrative portion of the case supplementary report provides further detail about the incident including that two perpetrators stole the Petitioner's vehicle, one of whom "pushed [the Petitioner] away from her vehicle . . . during the course of a vehicular hijacking." The Petitioner submitted a personal statement that confirmed the information in the case supplementary report. A *Certified Statement of Conviction/Disposition* from the Circuit Court [redacted] Illinois, indicated that one of the perpetrators was charged with vehicular hijacking and possession of a stolen vehicle. He pled *nolo contendere* to vehicular hijacking, but was found guilty of possession of a stolen vehicle.

After reviewing the evidence in the record, the Director issued a request for evidence (RFE) seeking evidence that the crime listed on the Petitioner's Supplement B was a crime related to one of the qualifying criminal activities listed in the statute and implementing regulations. In response, the Petitioner submitted an updated personal statement, medical records from [redacted] a copy of the Illinois vehicular hijacking statute, the Black's Law Dictionary's definition of assault, and previously submitted evidence—namely, the Petitioner's personal statement, the Supplement B, the [redacted] Police Department vehicle theft case report, and a psychological evaluation. The Director subsequently denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity.

[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.

On appeal, the Petitioner contends that she was the victim of the qualifying crime of felonious assault or, in the alternative, witness tampering. She further contends that vehicular hijacking under chapter 720, section 5/18-3(a) of the Ill. Comp. Stat. Ann. is substantially similar to the qualifying crime of felonious assault because they both share an element of "the use of force or threatening the imminent use of force" and involve felonious and inherently dangerous criminal activity.[2] The record does not support the Petitioner's contentions.

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

1. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crime of Felonious Assault or Witness Tampering 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 . . . .").

In this case, the Petitioner has not met her burden of establishing that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against her. On the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to, and provided a specific statutory citation to, vehicular hijacking under Illinois law. The certifying official did not anywhere reference an assault as having been detected, investigated, or prosecuted as perpetrated against the Petitioner, or cite to any provision under Illinois law defining or punishing the same. The accompanying case supplementary report, produced shortly after the criminal activity occurred, likewise did not identify any type of assault as having been perpetrated against the Petitioner; instead, it identified the offense committed as a motor vehicle theft under the Illinois Uniform Crime Reporting (IUCR) Codes—a system used by the [redacted] Police Department to classify criminal offenses. The narrative section of the vehicle theft case report similarly did not reference any assault under Illinois law; it described two officers apprehending one of the perpetrators in the Petitioner's vehicle after she called 911 to report an auto theft.

[2] The Petitioner cites to *Scott v. Harris*, 550 U.S. 372 (2007); *People v. Franklin*, 2019 Ill. App. 161411-U (2019); *People v. Winters*, 2020 Ill. App.2d 180784 (2020); *People v. Williams*, 2019 Ill. App 170369-U (2019); and the term of imprisonment for vehicular hijacking under chapter 730, section 5/5-4.5-30 of the Ill. Comp. Stat. Ann. as support for the assertion that vehicular hijacking is an inherently dangerous felony.

The Petitioner has likewise not met her burden of establishing that law enforcement detected, investigated, or prosecuted the qualifying crime of witness tampering as perpetrated against her. We acknowledge the Petitioner's assertions that a family member of one of the perpetrators asked her not to appear in court. However, borrowing from the analysis above, the Supplement B, the accompanying case supplementary report, and other relevant documentation do not anywhere reference or otherwise indicate that law enforcement at any time detected, investigated, or prosecuted witness tampering as perpetrated against the Petitioner, nor do they reference the facts as asserted by the Petitioner. Facts describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact are not sufficient to establish a petitioner's eligibility absent evidence that law enforcement actually detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III), (iii) of the Act; *see also* section 214(p)(1) of the Act (requiring certification from law enforcement establishing the petitioner's helpfulness "in the investigation or prosecution of" qualifying criminal activity); 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 . . . .").

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. Moreover, 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). Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault or witness tampering as perpetrated against her. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and she was the unfortunate victim of, vehicular hijacking.

2. Vehicular Hijacking under Illinois Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

When a certified offense is not a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, as here, 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).

At the time of the criminal activity, Illinois law defining vehicular hijacking provided the following, in pertinent parts:

> (a) A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force. . . .
>
> (c) Sentence. Vehicular hijacking is a Class 1 felony.

720 Ill. Comp. Stat. Ann. § 5/18-3 (West 2007).

Illinois law defines assault as when a person, "without lawful authority[,] . . . knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 Ill. Comp. Stat. Ann. § 5/12-1(a) (West 2007); *Kijonka v. Seitzinger*, 363 F.3d 645, 647 (7th Cir. 2004). For an assault to be classified as a felony, an aggravating factor such as the location of the assault, status of victim (e.g., person with a disability, school employee, peace officer, Emergency Medical Service (EMS) worker, or state employee), or the use of a firearm, device, or motor vehicle must be present. 720 Ill. Comp. Stat. § 5/12-2 (West 2007).

We acknowledge, as asserted by the Petitioner, that vehicular hijacking under chapter 720, section 15/8-3(a) of the Ill. Comp. Stat. Ann. is a felony offense. However, it is otherwise distinct in its nature and elements from Illinois's equivalent to the qualifying crime of felonious or aggravated assault. Specifically, vehicular hijacking requires the taking of a motor vehicle as an element of the offense, which is not required under any of Illinois' felonious assault provisions. Also, felonious assault under Illinois law requires conduct which places another person in reasonable apprehension of receiving a battery and the presence of an aforementioned aggravating factor, neither of which is required under Illinois's vehicular hijacking statute. Based on the foregoing, the Petitioner has not established that the nature and elements of vehicular hijacking are substantially similar to a felonious assault in Illinois and has not demonstrated that she was a victim of a qualifying crime or "any similar activity" to the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.[3]

C. 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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.

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[3] As our decision that the Petitioner was not the victim of qualifying criminal activity is dispositive of her appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding whether she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("[c]ourts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner is otherwise ineligible).