U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20083369

Date: APR. 18, 2022

Motion on Administrative Appeals Office 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), as a victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. On appeal, we found that the Petitioner did not overcome the basis for the Director's denial. The matter is now before us on a motion to reopen and reconsider. Upon review, we will dismiss the motions.

## I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

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. 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; 8 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. 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Relevant Facts and Procedural History

The Petitioner filed her U petition in January 2015 with a Supplement B signed and certified by a sergeant in the [redacted] Police Department in [redacted] California (certifying official). In Part 3.1 of the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment," "Felonious Assault," and "Attempt to commit any of the named crimes." Under "Other" the certifying official listed carjacking. In Part 3.3 of the Supplement B, which requests the statutory citation(s) for the criminal activity being investigated or prosecuted, the certifying official listed carjacking under section 215(a) of the California Penal Code (Cal. Penal Code) and attempt to commit crime under section 664 of the Cal. Penal Code. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official stated "[v]ictim advised police that unknown suspect attempted to gain entry into a vehicle while she was inside. Suspect attempted to open the driver's door, however, was unable. Victim was able to honk her horn to gain attention." When asked to provide a description of any known or documented injury to the Petitioner, the certifying official indicated that "[t]he victim was fearful and traumatized."

The arrest report listed the same statutory sections and described the offense as an attempted carjacking with no weapons. The arrest report narrative mentioned that the suspect attempted to open the Petitioner's front and rear car doors, which were locked; she began honking her horn and the suspect fled the scene; and she did not observe any weapons although one of his hands was in his pocket. The Petitioner's statements in the record included similar details and indicated that she believed the suspect may have had a weapon as he was behaving violently, and his hand was in his pocket.

The Director denied the U petition, concluding that the Petitioner did not establish that she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, and we affirmed this finding on appeal. Upon initial review of the motion to reopen and reconsider, we issued a notice of intent to dismiss (NOID) indicating that while the decisions noted above addressed whether the Petitioner suffered substantial physical or mental abuse, our review of the record indicated that the Petitioner has not established that she was the victim of qualifying criminal activity, a prerequisite in determining substantial physical or mental abuse.

In response to the NOID, the Petitioner submitted an updated Supplement B signed and certified in March 2022 by a commander in the [redacted] Police Department (new certifying official). In Part 3.1 of the Supplement B, the new certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment" and "Attempt to Commit Any of the Named Crimes." The new certifying official did not list "Felonious Assault." In Part 3.3, the new certifying official listed carjacking under section 215(a) of the Cal. Penal Code, attempt to commit crime under section 664 of the Cal. Penal Code, and false imprisonment under section 236 of the Cal. Penal Code. The updated Supplement B otherwise included the same information as the initial Supplement B.

The issues before us are whether the Petitioner was the victim of qualifying criminal activity, and if so, whether she suffered substantial physical or mental abuse as a result.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crime of Felonious Assault or False Imprisonment 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), 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 . . . .").

Although the certifying agency indicated at Part 3.1 of the original Supplement B that the Petitioner was a victim of a crime "involving or similar to" felonious assault, the certifying official's completion of Part 3.1 is not conclusory evidence that the Petitioner was the victim of qualifying criminal activity. Rather, the purpose of Part 3.1 is only to identify the general category of criminal activity to which the offense(s) in Part 3.3 may relate. Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007). In addition, the updated Supplement B did not check the box for "Felonious Assault." It is Part 3.3 and relevant, credible evidence related to the investigation or prosecution which establishes the specific crime or crimes that the certifying agency detected, investigated, or prosecuted that resulted in a petitioner's victimization. In this case, the certifying agency did not cite to the corresponding state criminal statute of any form of assault at Part 3.3 as a criminal offense that was actually investigated or prosecuted in either Supplement B. Instead, the certifying agency listed attempt to commit a crime and carjacking. As a result, the Petitioner has not established that the certifying agency detected or investigated the crime of felonious assault as having been committed against her.

In regard to the Petitioner's contention that she was the victim of the qualifying crime of false imprisonment, we acknowledge that in Part 3.1 of the updated Supplement B, the new certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "False Imprisonment" and "Attempt to commit any of the named crimes." We also acknowledge that in Part 3.3, the new certifying official cited to false imprisonment under section 236 of the Cal. Penal Code as a specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. However, the updated 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 false imprisonment 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").

The original Supplement B submitted with the Petitioner's U petition and the remaining evidence in the record do not reference any false imprisonment provision under California law or otherwise indicate that false imprisonment was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. The arrest report does not reference false imprisonment as perpetrated against Petitioner, or an attempt to do so. Instead, the arrest report reflects that law enforcement detected and investigated as perpetrated against the Petitioner the crime of attempted carjacking under California law. Moreover, the updated Supplement B was certified by a different individual in the [redacted] Police Department more than 7 years after the certification of the original Supplement B and nearly 10 years after the incident in question. It is not accompanied by a statement from the new certifying official or any other evidence explaining the reasons behind the additional statutory citation. Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that the certifying agency detected or investigated the crime of false imprisonment as having been committed against her.

C. Carjacking under California Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault or False Imprisonment

As carjacking is not specifically listed as a qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act, the Petitioner must establish that it is a crime "involving or similar to" felonious assault or false imprisonment. For a crime to be considered similar, its nature and elements must be substantially similar to a qualifying crime. 8 C.F.R. § 214.14(a)(9). The determination of whether a crime is substantially similar to qualifying criminal activity entails comparing the nature and elements of the investigated crime with a statutorily enumerated crime.

In this case, when the offense was committed, California law defined carjacking as "the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence ... against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear." Cal. Penal Code § 215(a) (West 2012). During the same time, California law defined simple assault, a misdemeanor, as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." Cal. Penal Code §§ 240-241 (West 2012). California recognizes a distinction among misdemeanor and felony assault offenses based upon the presence of aggravating factors; for an assault to be considered a felony offense, it must generally involve an additional factor such as the

use of a caustic chemical, deadly weapon or instrument, flammable substance, or a stun gun or less lethal weapon; force likely to produce great bodily injury; or an assault against a specific class of persons (e.g., peace officers, fire fighters, custodial officers, or school employees). *Compare* Cal. Penal Code § 240 *with* §§ 244, 244.5, 245, 245.2-245.3, 245.5.

There are several notable differences between the carjacking and felony assault statutes. First, carjacking contains as an element the felonious taking of a motor vehicle in the possession of another by force or fear, while felony assault under California law does not require any unlawful taking. In addition, felony assault requires the unlawful attempt to commit violent injury and the presence of an aggravating factor, neither of which is required under the carjacking statute. As such, the Petitioner has not established that the nature and elements of carjacking are substantially similar to felonious assault under California law.

Furthermore, when the incident occurred California law defined false imprisonment as "the unlawful violation of the personal liberty of another." Cal. Penal Code § 236 (West 2012). The California carjacking statute requires the taking of a motor vehicle with an intent to deprive by means of force or fear whereas the false imprisonment statute requires a violation of personal liberty. The two statutes contain no overlapping elements. Although the Petitioner asserts that attempting to steal a car is an unlawful violation of personal liberty of the individual(s) in the car and therefore an element of false imprisonment is in the crime of carjacking, she provides no legal basis for this claim. Based on the foregoing, the Petitioner has not established that the nature and elements of carjacking are substantially similar to false imprisonment under California law. Therefore, the Petitioner has not demonstrated that she was a victim of any qualifying crime or "any similar activity" to the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

D. Substantial Physical or Mental Abuse as a Result of Qualifying Criminal Activity

As our decision that the Petitioner was not the victim of qualifying criminal activity is dispositive of her motion, we decline to reach and hereby reserve the Petitioner's arguments regarding whether she suffered substantial physical or mental abuse as a result of qualifying criminal activity, the ground for denial identified by the Director. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts 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 an applicant is otherwise ineligible).

## III. CONCLUSION

The Petitioner has not submitted new evidence sufficient to establish that she was the victim of qualifying criminal activity. Therefore, she has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy. Therefore, she has not met the requirements for a motion to reconsider.

**ORDER**: The motion to reopen is dismissed.

**FURTHER ORDER**: The motion to reconsider is dismissed.