U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21402261

Date: APR. 20, 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). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and dismissed a subsequent motion to reopen and motion to reconsider, concluding that the Petitioner did not establish that he was the victim of a qualifying crime. We dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen and motion to reconsider. On motion, the Petitioner submits additional evidence and asserts that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. Upon review, we will remand to the Director for the issuance of a new decision.

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 petitioners 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, 375 (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. 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)(1). 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).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

II. ANALYSIS

The Petitioner filed his U petition in July 2015 with a Supplement B signed and certified by a first assistant at the [redacted] District Attorney's Office in [redacted] Texas (certifying official). The certifying official checked the boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Conspiracy to commit any of the named crimes," "Solicitation to commit any of the named crimes," and "Other: Attempted Arson." The certifying official did not provide a specific statutory citation investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, the certifying official indicated that in [redacted] 2011, "J-O-D-[1] recruited J-A-E- to burn down the house of the petitioner." The Supplement B provided further details regarding the crime to indicate that no physical injuries were suffered as the police intervened and apprehended the suspects prior to their actually setting fire to the home, but that the family suffered mental anguish as a result of the attempted arson. The accompanying police report listed the offense investigated as solicitation-arson and provided that, ultimately, the perpetrators decided not to burn down the Petitioner's house due to his family being home at the time of their would-be attempt to commit the arson.

The police reports indicate that the Petitioner agreed to have his phone conversations recorded to assist with the arson investigation. The record also contained additional evidence[2] indicating that during the course of his providing assistance in the investigation of the crime the Petitioner was approached by one of the perpetrators and was asked to lie to law enforcement by telling them "this was all a joke or a misunderstanding." The Petitioner submitted an additional Supplement B, certified in August 2019 by the [redacted] Police Department [redacted] The certifying official checked the box for "Witness Tampering" and identified section 36.05 of the Texas Penal Code (Tex. Penal Code) (tampering with a witness) as the specific statutory citation(s) investigated or prosecuted as perpetrated against the Petitioner. In describing the criminal activity being investigated or prosecuted, the certifying official indicated that the perpetrator solicited arson on a habitation (home) that belonged to the Petitioner and the Petitioner assisted police by giving statements and allowing his phone to be recorded. The perpetrator attempted to procure false statements from the Petitioner in order to use such statements

[1] We use initials to protect individuals' identities.
[2] Recorded phone conversations by law enforcement between Applicant and perpetrator.

to limit the Petitioner's ability to testify against the perpetrator later. Additionally, the certifying official noted the Petitioner's assistance in the investigation and prosecution and provided that the perpetrator was ultimately convicted of the felony offense of solicitation arson habitation and sentenced to five years in prison as punishment.

In our prior decision dismissing the appeal, we highlighted that the original Supplement B submitted with the U petition did not demonstrate that a violation of Texas' witness tampering statute was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner, and the police report only listed "Solicitation – Arson." With regard to the updated Supplement B certified by the [redacted] in August 2019, we determined that no additional information was provided for or referenced by the certifying official sufficient to establish that the qualifying crime of witness tampering was actually detected or investigated in 2011 when the incident occurred.[3]

On motion, the Petitioner submits a brief from counsel along with new evidence in the form of a clarification letter from the [redacted] Chief, who stated the following:

> On or about August 14, 2019, our office certified that [Petitioner] was a cooperating victim of the crime of Tampering With Witness ("witness tampering") as defined by section 36.05 of the Texas Penal Code. Indeed, [Petitioner] possessed information concerning the criminal activity that gave rise to the witness tampering investigation and was also helpful in the investigation. I write to confirm that the [redacted] Police Department did indeed investigate whether [Petitioner] was the victim of witness tampering.
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> The investigation began on or about [redacted] 2011, when it was discovered that an individual named [J-O-D-] intended to commit arson, or have arson committed, at the home of [Petitioner]. [J-O-D-] solicited and instructed a second individual named [J-A-E-] to commit the arson. [J-A-E-] was arrested for an extraneous offense and disclosed to our department that he had been recruited by [J-O-D-] to commit the arson. [J-O-D-]'s solicitation of [J-A-E-] for the arson was the primary offense investigated. For this reason, arson was listed as the "primary offense" in the reports generated at that time. Our office was also aware of, detected, and investigated, however, [J-O-D-]'s attempts to tamper with [Petitioner] as a potential witness.
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> Indeed, during the course of our investigation, it was discovered that [J-O-D-] had contacted [Petitioner] regarding the offense. [Petitioner] stated [J-O-D-] had asked him to lie to his attorney. [J-O-D-] called [Petitioner] while [Petitioner] was giving his statement to Investigator [J-M-]. [Petitioner] accepted the call in a manner that allowed Investigator [J-M-] to record the call and place the recording into evidence. [Petitioner] also provided Investigator [J-M-] with his telephone so all voicemails from [J-O-D-] could be recorded and taken into evidence. All of these actions by Investigator [J-M-] have been documented in their reports with regard to the investigation of [J-O-D-].

[3] We note that the Supplements B present in the record were certified by two separate agencies, with the initial certified by the [redacted] District Attorney's Office in [redacted] Texas, and the second certified by the [redacted] in August 2019.

The [redacted] Chief closed the letter by stating that the perpetrator's actions were an apparent attempt to pressure and coerce the Petitioner to testify falsely; withhold testimony and information; and abstain from, discontinue, and delay the perpetrator's criminal prosecution, all in violation of section 36.05(a) of the Tex. Penal Code.

Because the letter from the certifying official submitted on appeal is material to the Director's ground for denial, we will remand the matter for the Director to consider the evidence in the first instance and redetermine whether the Petitioner has met his burden of establishing that he is a victim of a qualifying criminal activity and has otherwise satisfied the remaining eligibility criteria for U nonimmigrant status, including the provisions specific to the qualifying crime of witness tampering at 8 C.F.R. § 214.14(a)(14)(ii) (stating that a petitioner may be considered a victim of the qualifying crime of witness tampering if they have been directly and proximately harmed by the perpetrator of the witness tampering and there are reasonable grounds to conclude that the perpetrator committed the witness tampering, at least in principal part, as a means to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity or to further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system).

III. CONCLUSION

As the Director did not have the opportunity to consider the evidence that is before us on motion, and the evidence is material to the Director's conclusion that the Petitioner had not established eligibility for U nonimmigrant classification, the matter is remanded to the Director to consider this evidence and issue a new decision.

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