U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19575519

Date: FEB. 1, 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish, as required that he was the victim of a qualifying crime, and we dismissed the Petitioner's subsequent appeal on the same ground.

The matter is now before us on a combined motion to reopen and reconsider. The Petitioner submits additional evidence and asserts that our prior adverse decision was in error.

Upon review, we will dismiss the motion.

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 the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As previously discussed, to establish eligibility for U-1 nonimmigrant classification, petitioners must establish in part that they have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. "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).

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 that the petitioner possesses information concerning the qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of it. Section 214(p)(1) of the Act; 8 C.F.R.

§ 214.14(c)(2)(i). 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. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The issue on motion is whether the Petitioner has presented new facts or evidence that warrants reopening and reexamination of our prior determination that he did not establish he was the victim of a qualifying criminal activity, and whether the decision dismissing his appeal on this ground was incorrect as a matter of law or USCIS policy based on the evidence in the record at the time. We incorporate our appellate decision here by reference and will repeat only the facts necessary to address the Petitioner's assertions on motion.

The Petitioner filed his Form I-918 based on a claim that he was the victim of a qualifying criminal activity perpetrated against him in 2014. In support, the Petitioner submitted two Supplements B dated in 2015 and 2019, on which two different certifying officials, P-A-H- and K-C-[1] indicated that he was the victim of criminal activity involving or similar to "Felonious Assault" and "Other: Robbery." In Part 3.3 of the Supplements B, which requests the statutory citations for the criminal activity being investigated or prosecuted, both certifying officials cited section 211 of the California Penal Code, which defines the crime of robbery under California law as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." Cal. Penal Code § 211 (West 2014). In Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, the certifying officials stated that the Petitioner "was robbed and received verbal threats that included being shot if he did not give [the perpetrators] everything he had." The Director of the Nebraska Service denied the Form I-918, concluding that the evidence in the record, which included an investigative report describing the details of the offense, indicated that the only criminal activity investigated or prosecuted as perpetrated against the Petitioner was robbery, which was neither a qualifying criminal activity, nor substantially similar to the qualifying crime of felonious assault indicated on the two Supplements B.

On appeal, the Applicant submitted a third Supplement B dated in 2020 and signed by K-C-, the second certifying official. K-C- indicated on that Supplement B that the Petitioner was the victim of felonious assault and conspiracy to commit any of the named crimes, and cited sections 211 and 245 of the California Penal Code, which corresponded to robbery and assault with a deadly weapon. In describing the criminal activity that was investigated or prosecuted, K-C- referenced the underlying police report and stated that the Petitioner "was the victim of violent assault by three assailants who used spray paint as an instrument to inflict serious bodily harm . . . [and] threatened to spray the victim in the face and eyes."

We dismissed the appeal explaining that the updated Supplement B, when considered in context of the previously submitted evidence, was not sufficient to establish that law enforcement actually detected, investigated, or prosecuted a crime of felonious assault as perpetrated against the Petitioner. Specifically, the 2015 and 2019 Supplements B cited only to robbery under section 211 of the

[1] We use initials to protect the individuals' privacy.

California Penal Code as the specific crime detected, investigated, or prosecuted and the certifying officials described the Petitioner as having been robbed. Similarly, the underlying investigative report indicated that law enforcement responded to a report of robbery and did not reference any assault or attempted assault against the Petitioner, and the court documents reflected that the suspects were arrested and charged only with robbery. Lastly, while the certifying official, K-C- added a citation to section 245 of the California Penal Code to the updated 2020 Supplement B, the Petitioner did not provide a statement from the certifying agency or other relevant evidence to explain why the citation was added over five years after the incident occurred and the perpetrators prosecuted, and over four years after the initial Supplement B was certified by the same law enforcement agency to indicate that the only crime detected, investigated or prosecuted as perpetrated against the Petitioner was robbery. Consequently, as the new Supplement B was not consistent with other evidence in the record and he did not adequately address the inconsistency, we determined that the Petitioner did not meet his burden of proof to show that he was the victim of a qualifying criminal activity, a threshold requirement for the nonimmigrant U classification under section 101(a)(15)(U)(i) of the Act.

On motion, the Petitioner submits court hearing transcripts along with previously provided police and investigative reports, court documents, his personal statement, and psychological evaluation. He asserts that the citation to section 245 of the California Penal Code in the 2020 Supplement B is not inconsistent with the original Supplement B, but rather expands on the crimes that law enforcement actually detected and investigated. The Petitioner does not provide a statement from the certifying official, but indicates that both the original and updated Supplements B were based on the same investigative report, which he claims described not only the crime of robbery but also a violent assault against him that satisfied the specific elements of the assault with a deadly weapon under section 245 of the California Penal Code. He avers that the court hearing transcripts are further evidence that he was the victim of the requisite felonious assault, as the court noted that the perpetrators committed a "violent felony" for the benefit of a gang.

We acknowledge the submission of the court hearing transcripts and the Petitioner's assertions. However, this additional evidence does not establish new facts sufficient to reopen the matter and reexamine our previous determination that the Petitioner did not show he was the victim of felonious assault, as he claimed. The [redacted] 2014 preliminary hearing transcript reflects the Petitioner's testimony that the defendants threatened to shoot him or spray him with a spray can and took cash and personal items from him, consistently with the information contained in the police and investigative reports we considered on appeal. While the Petitioner indicates that his court testimony is evidence that he had experienced an assault, the mere fact that the perpetrators' actions may appear to fit the elements of a qualifying criminal activity does not establish his eligibility for U nonimmigrant classification 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) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5). Here, as previously discussed the 2015 and 2019 Supplements B and other evidence in the record identified robbery as the only crime that was detected, investigated, or prosecuted and none of the related documents, including the preliminary hearing transcript the Petitioner now submits referenced assault.

The Petitioner next asserts that the hearing transcripts show that the qualifying crime of felonious assault was nevertheless detected, because the court referred to the offense of which he was the victim as a "violent felony." We do not find this assertion persuasive. As an initial matter, the Petitioner does

not explain how the court's characterization of the offense as a violent felony supports his claim that the offense qualifies as a felonious assault under section 245 of the California Penal Code. Furthermore, the [redacted] 2015 plea hearing transcript reflects only the court's determination that robbery, the crime with which the defendants were charged was a "violent felony" for the purposes of sentencing. *See* Cal. Penal Code § 667.5(c) (West 2015) (providing that certain crimes merit special consideration when imposing a sentence to show society's condemnation, and that for those purposes "violent felony" means, in part "[a]ny robbery."). Specifically, the transcript shows that the court advised one of the defendants that the gang allegation would be dismissed if the defendant accepted the prosecution's offer to serve three years in state prison for second degree robbery, but that he would have to "serve it at 85 percent because it's a violent felony." There is nothing in either the 2014 or 2015 hearing transcripts to indicate that the charges against the defendants included assault, or that the court otherwise considered whether the defendants assaulted the Petitioner in the course of committing robbery. Neither the Petitioner's testimony in criminal proceedings that the defendants took his personal property by threatening him with physical violence, nor the classification of robbery as a violent felony for sentencing purposes is sufficient to show that law enforcement actually detected, investigated, or prosecuted felonious assault as the crime perpetrated against the Petitioner.

The Petitioner also has not shown that our prior determination on this issue was incorrect as a matter of law or USCIS policy, or that it was otherwise incorrect based on the evidence in the record at the time we dismissed his appeal. Specifically, the Petitioner has not identified any legal authority indicating that robbery under section 211 of the California Penal Code law is a qualifying criminal activity or that it is substantially similar to the requisite felonious assault. The Petitioner also has not demonstrated that we erred in finding the preponderance of the evidence insufficient to show that he was the victim of an assault with a deadly weapon, as the documents he submitted reflected that the only crime law enforcement detected, investigated, or prosecuted as perpetrated against him was robbery, and he did not provide a statement from the certifying agency explaining why a citation to section 245 of the California Penal Code was included for the first time in the 2020 Supplement.

In conclusion, the new evidence submitted on motion is still insufficient to support the Petitioner's claim that he was the victim of a felonious assault, and the Petitioner has not identified any error of law or USCIS policy in our decision dismissing his appeal on that ground. Consequently, the Petitioner has not established a basis for reopening on these proceedings and for reconsideration of our previous determination that he did not meet his burden of proof to demonstrate that he was the victim of a qualifying criminal activity for the purposes of U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. As such, he is ineligible for the requested immigration benefit and his Form I-918 remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.