U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15856954

Date: JUN. 01, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U-1 nonimmigrant classification as a victim of qualifying criminal activity 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). We review 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. 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 his U petition in May 2015 stemming from criminal activity that occurred in 2008 when the record reflects that he was six years old. With the petition he submitted a Supplement B, a police traffic collision report, medical records, a mental health examination, letters of support, a letter to the Petitioner's mother from the California Victim Compensation Program, and copies of memorandums, legal findings, and our non-precedent decisions in unrelated cases. On the Supplement B, certified in December 2014 by the [redacted] California, Police Department, boxes are checked indicating that the Petitioner was the victim of criminal activity involving or similar to felonious assault and other: felony hit and run. The Supplement B provided the statutory citations for the criminal activity being investigated or prosecuted as California Vehicle Code section 20001 and California Penal Code section 245(a)(4),[1] which correspond, respectively, to the duty to stop at the scene of an injury accident and to assault with deadly weapon or force likely to produce great bodily injury. For a description of the criminal activity being investigated, the certifying official stated that a suspect drove a vehicle onto the sidewalk, colliding into the Petitioner. For a description of known injuries, the official stated that the Petitioner was hit by the suspect's car, landed on the hood, rolled onto the ground, and was taken to a hospital for treatment. For helpfulness the official indicated that due to the Petitioner's age his mother spoke to the responding officer.

The traffic collision report listed the primary collision factor as violation of Vehicle Code section 22107, which corresponds to a vehicle turning infraction. The statement from of the [redacted] Police Department identifies the offense or crime as [Vehicle Code section] 20001. In a narrative with the traffic collision report, the responding officer described the Petitioner as standing on the sidewalk when a car drove on the sidewalk colliding into him, that he fell to the ground, and that the driver continued without stopping to give information. The form indicated injuries to the Petitioner as laceration on his back and a bump on his head and that he was taken to a hospital. The officer reported there was one witness who stated he heard loud noises and ran out of his residence to see the car driving away. The witness statement provided that he heard a loud noise from outside, ran out and saw the car speed off. The witness described the driver and that he saw a woman holding a child that had been hit by the car.

In denying the U petition, the Director determined that the Petitioner did not establish he was the victim of qualifying criminal activity and therefore did not establish eligibility for the remaining requirements. The Director acknowledged that the Supplement B indicated the Petitioner was victim of felonious assault and provided the citations for California Vehicle Code section 20001 hit and run and California Penal Code section 245(a)(4) assault by means likely to produce great bodily injury,

[1] At the time of the 2008 criminal activity against the Petitioner the California Penal Code at section 245(a) included only three subsections.

but the Director noted that the traffic collision report and witness form indicated the investigated crime as Vehicle Code section 20001 for felony hit and run and Vehicle Code section 22107 for unsafe lane changes. The Director explained that California Penal Code section 245(a)(1) is substantially similar to felonious assault, but that California Vehicle Code section 20001 hit and run only requires a driver to remain at the scene and provide information. The Director also noted that as the intentions of the driver to commit violent injury were not known, the offence cannot be classified as a felonious assault. The Director concluded that evidence in the record did not support that the certifying agency actually detected or investigated the crime of assault by means likely to produce great bodily injury, so the certified criminal activity was not substantially similar to felonious assault.

B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime 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*, 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 . . . .").

On appeal, the Petitioner asserts through counsel that the Director erred by applying a substantially similar approach to compare the statute of hit and run with that of assault with intent to commit great bodily injury when under the categorical approach it is felonious assault. He contends that the Director relied on the police report and failed to look beyond the specific crime and review the underlying record where facts show the suspect assaulted him in a manner intended to cause greatly bodily injury, facts that are analogous to felony assault.[2] The Petitioner refers to the Interim Rule and Congressional intent to argue for a broad interpretation of categories for qualifying crimes and asserts that by failing to focus on facts as well as elements, USCIS thwarts the ameliorative purpose of U nonimmigrant statutes to aid law enforcement. The Petitioner states that USCIS should give deference to law enforcement and maintains that the Supplement B and police report are sufficient evidence that he was victim of a qualifying crime as a driver struck him with a vehicle, causing him to roll up on the hood of the car, and that the next acts were clearly intentional as in attempt to escape the driver purposefully sped up knowing it would propel a child off the car hood and on to the ground. The Petitioner argues that it does not matter whether the police report states hit and run or assault because USCIS should

[2] The Petitioner refers to our non-precedent decisions in unrelated cases in support of his assertions. Our non-precedent decisions are not published as precedent decisions and do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

have found him victim of felony assault by the facts and that proper weight was not given to the certifying official's determination that indicated the crime investigated was assault.

A review of the record does not demonstrate that law enforcement detected or investigated felony assault. The traffic collision report, which was produced contemporaneously with the criminal activity, identified the criminal activity as Vehicle Code section 20001 hit and run and Vehicle Code section 22107 for a vehicle turning infraction. It did not identify assault as being detected or investigated. Although the Supplement B checked the box for felonious assault and provided the statutory citation for assault, it was prepared and signed six years after the criminal activity occurred. The record does not contain an explanation from the certifying official why the criminal statutory citation was added when the police report identified only vehicle code violations.

Here, as the traffic collision report indicated the detected crime as hit and run, the record does not demonstrate that a felonious assault was detected or investigated as having been committed against the Petitioner. The record does not contain other investigative reports or documentation indicating that there was any further investigation or prosecution of criminal activity. A preponderance of the evidence in the record does not indicate that felonious assault was investigated or prosecuted as perpetrated against the Petitioner.

C. Hit and Run is Not Substantially Similar to the Qualifying Crime of Felonious Assault

Hit and run is not specifically listed as qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act, and the Petitioner must therefore establish that the nature and elements are substantially similar to a statutorily enumerated criminal activity. 8 C.F.R. § 214.14(a)(9). As determined by the Director, the nature and elements of the hit and run and the felony assault statutes in California are not substantially similar. At the time of the offense perpetrated against the Petitioner, section 245(a)(1) of the California Penal Code defined felony assault as an assault (an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another) with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury. Cal. Pen. Code §§ 240 and 245(a)(1) (West 2008).

At the time of the incident the California Vehicle code provided:

> § 20001. Duty to stop at scene of injury accident; penalties
> (a) The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

Cal. Veh. Code § 20001 (West 2008)

Section 20001(a) of the California Vehicle Code requires an individual to stop at the scene of an accident causing injury while sections 20003 and 20004 discuss a driver's duty to give personal information at the scene, report the accident, and provide reasonable assistance in the case of injury or death of another person. Vehicle Code sections 20001(b)(1) and (2) provide that hit and run is punished as a misdemeanor when an injury occurs, whereas felony hit and run applies to accidents in which death, or permanent, serious injury occur. Although Vehicle Code section 20001 applies in the

case of an accident that resulted in injury to a person, it does not require "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another," as necessary for assault under Penal Code section 240, nor does it include use of a deadly weapon or force likely to produce great bodily injury, as required for felony assault under Penal Code section 245.

Consequently, the Petitioner has not established that he was the victim of qualifying criminal activity, which is required for all U-1 eligibility criteria at section 101(a)(15)(U)(i) of the Act.

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

ORDER: The appeal is dismissed.