U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19864404

Date: MAR. 15, 2022

Motion on Administrative Appeals Office 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen. The Petitioner submits additional evidence and reasserts his eligibility. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner, a 46-year-old native and citizen of Mexico, filed the instant U petition in September 2015 with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) signed and certified by the Lieutenant of the Youth and Family Services Division with the [redacted] Police Department [redacted] in [redacted] California. The certifying official indicated that the Petitioner was the victim of qualifying criminal activity involving or similar to: "Other: Felonious Robbery/211 PC[,]" and listed section 211 of the California Penal Code (Cal. Penal Code), defining robbery, as the specific statutory citation investigated or prosecuted. The certifying official explained that "[the Petitioner] was a victim of strong arm robbery." According to his statement, he was "put in a headlock, punched in the stomach, and punched on the head while being robbed." An incident report from the [redacted] accompanying the Supplement B listed the crime investigated as "Robbery-Strong Arm (hands, fists, feet, etc.)" under section 211 of the Cal. Penal Code. In response to the Director's request for evidence (RFE), the Petitioner provided an updated Supplement B indicating that he was the victim of criminal activity involving or similar to the qualifying crimes of "Felonious Assault" and "False Imprisonment," and citing to sections 211, 245(a), and 236 of the Cal. Penal Code, defining robbery,

aggravated assault, and false imprisonment, as the specific statutory citations investigated or prosecuted. The certifying official's description of the criminal activity mirrored that on the initial Supplement B, except that he added that "there was an object [the Petitioner] believed to be a gun pressed into his side."

The Director denied the petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity, or a victim of a crime that was "substantially similar to qualifying crimes found within the regulation." On appeal, the Petitioner provided a third Supplement B, signed by the certifying official in December 2019, and asserted that he was the victim of the qualifying crimes of felonious assault and false imprisonment based on that Supplement B. We incorporate our prior decision dismissing the Petitioner's appeal here by reference. After reviewing the record, we determined that the Petitioner did not establish, by a preponderance of the evidence, that he was the victim of the qualifying crimes of felonious assault or false imprisonment. Specifically, we noted that the certifying official that completed the original Supplement B did not indicate that felonious assault or false imprisonment was detected, investigated, or prosecuted anywhere in the record. We additionally noted that the updated Supplement B did not reference any additional information that was considered in concluding that the added crimes of felonious assault and false imprisonment were actually detected or investigated in 2014 when the incident occurred, or otherwise explain why felonious assault and false imprisonment were not included in the original Supplement B as an offense that was investigated by the [redacted].[1]

On motion, the Petitioner again contends that he was the victim of qualifying crimes of felonious assault and false imprisonment. He argues that we based our determinations on appeal on an incomplete incident report from the [redacted] that his prior attorney filed with his U petition.[2] He now submits a complete copy of the incident report, which he maintains overcomes our determination that "neither the original Supplement B nor the incident report cite[d] to or referenc[ed] any felony level assault provision under California law as detected, investigated or prosecuted as perpetrated against [him]." He specifically references the narrative on pages 4 and 5 of the incident report which he claims describes conduct constituting felonious assault and false imprisonment and corroborates [redacted]'s certification on the updated Supplement B.

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

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,

[1] Additionally, we concluded that strong arm robbery, the crime certified on the updated Supplement B, was not substantially similar to the qualifying crimes of felonious assault or false imprisonment. The Petitioner does not contest that determination on motion, and as such we will not address the matter further in this decision.

[2] The record reflects that the Petitioner initially only submitted the first page of a four page incident report from the [redacted]

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 . . . .").

We acknowledge the Petitioner's contentions on motion. However, we reiterate that he must submit evidence sufficient to demonstrate, by a preponderance of the evidence, that law enforcement detected, investigated or prosecuted a qualifying crime or criminal activity as having been perpetrated against him. Here, the Petitioner has not met that burden. The complete copy of the incident report the Petitioner submits on motion does not indicate that any additional offenses other than "Robbery-Strong Arm (hands, fists, feet, etc.)" were detected or investigated. Furthermore, the narrative on pages 4 and 5 of the incident report contains the same details of the incident that we previously considered on appeal, namely that the Petitioner was the victim of a robbery during which he was put in a headlock, punched in the head and stomach, and felt what appeared to be a gun pressed into his side.[3] Furthermore, as discussed in our prior decision, "the certifying official that completed the original Supplement B did not indicate in any manner that felonious assault or false imprisonment was detected, investigated, or prosecuted." We also noted that the certifying official did not reference any additional information on the updated Supplement B "that was considered for concluding that the added crimes of felonious assault and false imprisonment were actually detected or investigated in 2014 when the incident occurred, or otherwise explain why felonious assault and false imprisonment were not included in the original Supplement B as an offense that was investigated by the [redacted]." The Petitioner has again not addressed or otherwise explained the reason for these discrepant descriptions of the criminal activity on motion. Accordingly, while we do not diminish the harm the Petitioner describes having suffered, the preponderance of the evidence does not demonstrate that law enforcement at any time actually detected, investigated, or prosecuted the qualifying crimes of felonious assault or false imprisonment as perpetrated against him. Instead, as we previously concluded, the record indicates that law enforcement detected, investigated, or prosecuted as perpetrated against the Petitioner the crime of robbery under section 211 of the Cal. Penal Code, which is not a qualifying crime or substantially similar to a qualifying crime.

The Petitioner additionally contends that he was the victim of the qualifying crimes of felonious assault and false imprisonment under sections 245(a) and 236 of the California Penal Code based on the factual circumstances of the offense. Specifically, he argues that several aggravating factors—force likely to cause great bodily injury and the use of a firearm—were present during his assault. He notes that he was "placed in a chokehold and punched with such force sufficient to throw [him] to the ground" and "felt pressed against his side an object he believed was a firearm." He contends that it is immaterial that the police officer's only knowledge of a possible firearm came from the Petitioner's belief, or that the Petitioner was not certain in his belief that the object pressed against his side was a firearm. He further contends that by noting the possible presence of a firearm, the police officer was investigating aggravated assault with a firearm, a qualifying crime under the Act. Regarding false

[3] The narrative portion of the incident report from the [redacted] states in relevant part that, "[perpetrator 1] wrapped his arm around [the Petitioner's] neck, putting him in a choke-hold [*sic*], and [suspect 2] punched [the Petitioner] in the stomach. While [suspect 1] had [the Petitioner] in a choke-hold [*sic*], [the Petitioner] felt something pressed against his side. [The Petitioner] believed it was a handgun. [Suspect 2] then reached into [the Petitioner's] pockets and removed $40. [Suspect 2] then punched [the Petitioner] on the left side of his head."

imprisonment, the Petitioner argues that he was physically restrained by menace (threatened use of a firearm), which forced him to stay against his will. Borrowing from the analysis above, however, evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is 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) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5). As stated above, the initial Supplement B, as well as the underlying incident report which served as its basis, do not anywhere reference felonious assault or false imprisonment under California law or otherwise establish that law enforcement detected, investigated, or prosecuted the same as perpetrated against the Petitioner. Further, although the Petitioner submitted subsequent Supplement Bs indicating that he was the victim of criminal activity involving or similar to the qualifying crimes of felonious assault and false imprisonment and citing to the statutory provisions for aggravated assault and false imprisonment under California law, he did submit any evidence from the certifying official regarding the reasons behind the added charges or otherwise establishing, by a preponderance of the evidence, that such offenses were actually detected, investigated, or prosecuted as perpetrated against him.

The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including the he 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 crimes of felonious assault or false imprisonment as perpetrated against him. Instead, as noted by the Director as well as on appeal, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted, and he was the victim of, robbery.

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

III. CONCLUSION

The Director properly determined that the Petitioner had not established, by a preponderance of the evidence, that he was the victim of qualifying criminal activity, as section 101(a)(15)(U)(i) of the Act requires, and the Petitioner has not resolved this deficiency on motion. Accordingly, the Petitioner

has not established his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The motion to reopen is dismissed.