U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19062645

Date: MAR. 21, 2022

Appeal of Vermont Service Center 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). The matter is now before us on appeal. On appeal, the Petitioner submits new evidence, previously submitted evidence, and a brief.. The Administrative Appeals Office reviews 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.[1] 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 her U petition in July 2015 with a Supplement B signed and certified in April 2015 by an Assistant Chief in the Criminal Investigations Command of the [redacted] Police Department in [redacted] Texas (certifying official). At 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 "Other: Robbery." At part 3.3, which asks for the specific statutory citations investigated or prosecuted, the certifying official again wrote "Robbery" but did not provide any specific citation. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated the Petitioner was "near her apartment when the armed suspect forcibly took her purse and fled the scene." When asked to provide a description of any known injury to the Petitioner, the entry indicated that the Petitioner "sustained superficial injuries as a result of this incident." The [redacted] Police Department offense report (police report) submitted with the U petition provided that the offense, which occurred in [redacted] 2013, was investigated as a "robbery (injury) by bodily force." The police report also provided details of the offense, noting that the perpetrator grabbed the Petitioner's purse by force and left marks on her shoulder from her purse strap, but that there was otherwise "no injury" and no need for emergency medical services. The police report did not indicate that the Petitioner reported the perpetrator as having been armed with any weapons.

In response to a request for evidence (RFE) issued by the Director, the Petitioner submitted an updated Supplement B signed and certified in November 2019 by a different certifying official with the [redacted] Police Department. On the updated Supplement B, the certifying official checked the box at part 3.1 indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and, at part 3.3, listed robbery under section 29.02 of the Texas Penal Code (Tex. Pen. Code) as the specific statutory citation for the criminal activity investigated or prosecuted as perpetrated against the Petitioner. The narrative portion of the updated Supplement B closely mirrored that of the original Supplement B except it no longer indicated that the suspect was armed when he forcibly took the Petitioner's purse. However, under part 4.2 of the updated Supplement B, which asks if the Petitioner has "been helpful, is [] being helpful, or is [] likely to be helpful in the investigation or prosecution of the criminal activity" in question, the certifying official changed the previous response and marked the box for "no." And, under part 4.3, the certifying official indicated that the Petitioner "refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity." In the space provided for an explanation, the certifying official stated that, after the Petitioner's initial report and voluntary statement, investigators were unable to

[1] The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

reach the Petitioner by phone and that a letter mailed to her address was returned as undeliverable. The certifying official went on to affirm the "Applicant made no effort to follow up with the investigation," "[a]ll investigative leads were exhausted but no suspect was identified," the "statute of limitations [] expired," and "no further action [was] needed."

After reviewing the evidence, the Director denied the U petition, concluding the record indicated the criminal activity investigated or prosecuted as perpetrated against the Petitioner was robbery under section 29.02 of the Tex. Pen. Code, which is not a qualifying crime and not substantially similar to a qualifying crime. As a result, the Director determined the Petitioner did not establish that she was the victim of qualifying criminal activity or that, by extension, she had satisfied the remaining U eligibility criteria which are dependent on that determination. The Director further noted that the Petitioner had also not established that she had suffered substantial physical or mental abuse as her injuries appeared to be minor, and that she had not established that she had been helpful in the investigation of qualifying criminal activity in light of the statements to the contrary on the updated Supplement B.

B. Robbery Under Texas Law Is Not a Qualifying Crime and Is Not Substantially Similar to the Qualifying Crime of Felonious Assault

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, 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 official checked a box under part 3.1 of the updated Supplement B indicating that the criminal activity of which the Petitioner was a victim involved a "felonious assault," the Petitioner does not assert, and the record does not show, that she was a victim of a Texas equivalent of that qualifying crime. Rather, the record, including the Supplement B forms, police report, and the Petitioner's statements, indicate that the only crime detected or investigated as perpetrated against her was a robbery under section 29.02 of the Tex. Pen. Code, which is not a qualifying crime.[2]

[2] In her discussion of the criminal activity at issue, the Petitioner asserts that the perpetrator was armed. We acknowledge the 2015 Supplement B described the perpetrator as an "armed suspect." However, the updated Supplement B removed the descriptor "armed" and neither Supplement B cited to any statutes relating to armed offenses. Moreover, the police report contained no references to the perpetrator being armed. The only criminal activity identified in the police report is "robbery (injury) by bodily force," consistent with an offense under section 29.02 of the Tex. Pen. Code, which requires "bodily injury" and does not require the use of weapon as an element of the offense.

When a certified offense is not a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act (providing that 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"); 8 C.F.R. § 214.14(a)(9) (providing that 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). Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction's statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense "involved," or was "substantially similar" to, a "qualifying crime or qualifying criminal activity" as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9).

On appeal, the Petitioner contends that she was the victim of qualifying criminal activity because the nature and elements of the robbery under section 29.02 of the Tex. Pen. Code perpetrated against her are substantially similar to those of aggravated assault under section 211.1(2) of the Model Penal Code (MPC).

First, the Petitioner's citation to the MPC is not relevant in this case because the criminal incident in question took place in Texas, a state which has felony assault statutes.[3] We generally refer to the MPC for guidance only in those cases arising out of states which do not have a statutory or common law equivalent to the qualifying criminal activity in question. *See* section 101(a)(15)(U)(iii) of the Act (providing that qualifying criminal activity includes "any similar activity in violation of Federal, State, or local criminal law"); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner).

Moreover, our review indicates aggravated assault under section 211.1(2) of the MPC is not substantially similar to robbery in Texas. At the time of the 2013 criminal activity, Texas robbery, as defined under section 29.02 of the Tex. Pen. Code, occurred if "in the course of committing theft . . . and with intent to obtain or maintain control of the property" an individual "(1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." Tex. Penal Code Ann. § 29.02(a)(1), (2) (West 2013). Robbery is a felony offense under Texas law. *Id.* at § 29.02(b). In contrast, MPC aggravated assault requires the presence of certain aggravating factors, including causing or threatening to cause *serious* bodily injury, causing such injury through actions that manifest *extreme*

[3] We note the Petitioner cites to one of our non-precedent decisions where we found that a robbery under section 29.02 of the Tex. Pen. Code was substantially similar to the qualifying crime of felonious assault. The Petitioner asserts the cited decision created binding policy and precedent that she relied on in filing her U petition. However, the cited decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions do not create policy. Rather, they 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. In this case, as stated, because Texas law has a state equivalent of the qualifying crime of felonious assault, USCIS determines whether the nature and elements of the robbery detected is substantially similar to those of the state equivalent. As discussed in this decision, the offenses are not substantially similar.

indifference to the value of human life, or causing bodily injury with a deadly weapon, which aggravating factors are not required under the Texas robbery statute.[4]

Although not directly contested by the Petitioner, we also affirm the Director's determination that robbery is not substantially similar to felonious assault under Texas law. Texas law provides that a person commits misdemeanor assault if they:

> (1) intentionally, knowingly, or recklessly causes bodily injury to another . . .
> (2) intentionally or knowingly threatens another with imminent bodily injury . . .
> (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Tex. Penal Code Ann. § 22.01(a)(1)-(3) (West 2013). In order for an assault to be classified as a felony aggravated assault in Texas, a person must, in pertinent part, commit an underlying assault and cause *serious* bodily injury to another or use or exhibit a deadly weapon during the commission of it. Tex. Penal Code Ann. § 22.02(a)(1), (2) (West 2013). We acknowledge that robbery and aggravated assault are felony offenses under Texas law. However, the elements of the crimes are otherwise distinct. Robbery occurs only in the course of committing a theft and requires intent to obtain or maintain control of another's property, which is not required under any of Texas' felonious assault provisions. Robbery also differs in regard to the requisite level of harm, requiring only bodily injury whereas an aggravated assault requires *serious* bodily injury. *See McCrary v. State*, 327 S.W.3d 165, 174 (Tex. App. 2010) (noting that aggravated assault requires proof of "serious bodily injury" and aggravated robbery only requires proof of "bodily injury"). Alternatively, aggravated assault may also be established by the use or exhibition of a deadly weapon during the commission of the underlying assault, which robbery under section 29.02 does not require. Accordingly, the nature and elements of robbery under section 29.02 of the Tex. Penal Code Ann. are not substantially similar to those of Texas' felonious assault equivalents.

Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that she is a victim of any qualifying crime at section 101(a)(15)(U)(iii) of the Act.

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 she was the victim of qualifying criminal activity, she necessarily cannot satisfy the other criteria at section 101(a)(15)(U)(i) of the Act.[5]

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[4] The MPC defines "aggravated assault as an "attempt[] to cause serious bodily injury to another, or cause[] such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life" or an "attempt[] to cause or purposely or knowingly cause[] bodily injury to another with a deadly weapon." Model Penal Code § 221.1(2) (Am. Law Inst. 2013).

[5] Because our finding that the Petitioner is not a victim of qualifying criminal activity is determinative, we do not reach her other arguments on appeal regarding the remaining eligibility grounds and hereby reserve the Petitioner's remaining appellate arguments. *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.

ORDER: The appeal is dismissed.

516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).