U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19994936

Date: MAR. 21, 2022

Appeal of Nebraska 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she was the victim of a qualifying crime or that she suffered substantial physical or mental abuse as a result of the same. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief asserting that she was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. 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

In December 2015, the Petitioner filed the instant U petition. In support of her claim, the Petitioner submitted a Supplement B as well as—among other items referenced by the Director—her personal statement, an investigative report from the police department, medical records, statements from friends and acquaintances, her wedding photos, birth certificates for her children, and a letter from a counselor diagnosing the Petitioner with post-traumatic stress disorder after a single evaluation session due to the distress she suffered from being the victim of a crime. Subsequently, in response to a request for evidence (RFE) issued by the Director, the Petitioner additionally submitted a letter from her attorney, a newly executed Supplement B, a copy of the previously submitted investigative report, copies of non-precedent decisions from our office, portions of statutory provisions from the Minnesota Criminal Code, her updated personal statement, a psychological evaluation, several letters from friends, a letter from her doctor, and photos showing that the Petitioner suffers from the skin condition vitiligo.

The original Supplement B checked the boxes to indicate that the Petitioner was a victim of criminal activity involving or similar to the qualifying crimes of Felonious Assault, Attempt to commit any of the named crimes, Related Crime(s), and Other (Robbery – Interfere with 911 call), but did not list any statutory citations for the specific offenses investigated or prosecuted as perpetrated against the Petitioner, as requested in Part 3.3 of the form. The narrative portion of the form described the incident as follows:

> [The Petitioner] was the victim of assault and robbery. She was thrown a rock at her vehicle while driving. She had her window open and the rock hit her head. She stopped her vehicle to inspect for damages, she was approached by a mob of . . . . males and female and whom stole her purse, cellular phone and threatened her safety. One of the males threatened to take her vehicle . . . . Although [Petitioner] did not suffer grave injuries from the rock hitting her head, her safety and well-being were threatened. A female assailant took her cellular phone from her and another man threatened to take her vehicle. Since her purse was stolen, she has been afraid that these people have her home address and may come to her home and harm her and her family."

[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.

The Supplement B submitted by the Petitioner in response to the RFE provided the same information but also indicated that the Petitioner tried to call 911 prior to her cell phone being stolen. Additionally, this Supplement B listed the statutory citations for the criminal activity investigated or prosecuted as: Minnesota Statutes Annotated (Minn. Stat. Ann.) sections 609.24 (simple robbery) and 609.78 (intentionally interrupting, disrupting, impeding, or interfering with an emergency call). The investigative report contains information consistent with that provided by law enforcement in both Supplement Bs, classifying the crime as simple robbery and "disturb peace-gm-emergency telephone calls." The report noted that the rock thrown at the Petitioner was "approximately the size of a person's fingertip," that the perpetrators asked her for money and took her purse, and that the perpetrators "ripped [her] phone out of her hands" as she attempted to call 911.

After reviewing the evidence in the record, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity, as the crimes investigated by law enforcement are not qualifying crimes or substantially similar to qualifying crimes under the Act and implementing regulations. The Director further concluded that the Petitioner did not submit sufficient evidence to establish that she suffered substantial physical or mental abuse as a result of having been the victim of a qualifying crime.

On appeal, the Petitioner submits a new Supplement B which checks the boxes to indicate that she was the victim of criminal activity involving or similar to the qualifying crimes of obstruction of justice, witness tampering, felonious assault, and attempt to commit any of the named crimes. The Petitioner argues, through counsel, that she was the victim of the qualifying crimes of felonious assault, obstruction of justice, and witness tampering. She asserts that the perpetrators' interference with her attempted 911 call is "substantially similar to obstruction of justice/legal process/arrest and witness tampering" as such action prevented her from calling for help and therefore "obstructed the legal process/arrest." Counsel further argues that the Director failed to consider evidence of the substantial mental abuse the Petitioner suffered as a result of being a victim of crime.[2]

B. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

The Act requires that petitioners "ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful" to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The requisite law enforcement certification must state, in pertinent part, that the petitioner "has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting." 8 C.F.R. § 214.14(c)(2)(i). "Investigation or prosecution" of qualifying criminal activity "refers to 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*

[2] Because our determination that the Petitioner has not established that she was the victim of qualifying criminal activity is dispositive of her appeal, as explained in detail below, we decline to reach and hereby reserve the Petitioner's appellate arguments on this issue. *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. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner is otherwise ineligible).

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 . . . .").

In this case, it is undisputed that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, robbery and interfering with an emergency call. It is further undisputed that, during the course of the robbery, she suffered an assault when she was hit in the face by a rock that was thrown into her vehicle. We likewise acknowledge that robbery under Minnesota law is punished as a felony. *See* Minn. Stat. Ann. § 609.24 (stating that "[w]hoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.") (West 2022). However, contrary to the Petitioner's arguments on appeal, this does not establish that law enforcement detected, investigated, or prosected, and she was the victim of, the qualifying crimes of felonious assault, obstruction of justice, or witness tampering.

As a preliminary matter, the U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a "felonious assault" must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred, distinct from the commission of a misdemeanor assault during the course of a separate felony. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "felonious assault" when committed "in violation of Federal, State or local criminal law" as a qualifying criminal activity). Moreover, the Petitioner has not otherwise met her burden of establishing that law enforcement detected, investigated, or prosecuted felonious assault, obstruction of justice, or witness tampering, or any other qualifying crime as perpetrated against her. We acknowledge that the certifying official checked a box on the initial and updated Supplements B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault, and checked boxes on the Supplement B submitted on appeal indicating that she was a victim of criminal activity involving or similar to obstruction of justice and witness tampering. However, the Supplements B, when read as a whole and in conjunction with other evidence in the record, do not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crimes of felonious assault, obstruction of justice, or witness tampering as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating that the burden "shall be on the petitioner to demonstrate eligibility" and that "USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B"). None of the Supplements B cite to or reference any felony-level assault provision under Minnesota law as detected, investigated, or prosecuted as perpetrated against the Petitioner, nor do they cite to the Minnesota provisions dealing with obstruction of the legal process or witness tampering. The remaining law enforcement documentation in the record, namely the investigative report, likewise makes no reference to the same, instead consistently indicating that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, robbery and interfering with an emergency call under Minn. Stat. Ann. sections 609. 24 and 609.78, respectively.

Accordingly, the Petitioner has not met her burden of establishing, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against her. Sections 101(a)(15)(U)(i)(III), 214(p)(1), and 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. at 375.

C. Interfering With an Emergency Call Under Minnesota Law is Not Substantially Similar to the Qualifying Crimes of Obstruction of Justice or Witness Tampering

As stated above, to qualify as a victim for U-1 classification, petitioners must establish that the crime detected, investigated, or prosecuted as perpetrated against them, and of which they are victim, is a qualifying crime or is substantially similar to the qualifying crime. 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 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). 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. *Id.* 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 argues that interfering with an emergency call under Minn. Stat. Ann. section 609.78—one of the crimes investigated or prosecuted by law enforcement as perpetrated against her—is substantially similar to witness tampering under Minn. Stat. Ann. section 609.498 and obstruction of justice under Minn. Stat. Ann. section 609.50.

At the time of the offense against the Petitioner, Minn. Stat. Ann. section 609.798 provided, in pertinent part, that it was a gross misdemeanor to "intentionally interrupt[], disrupt[], impede[], or interfere[] with an emergency call or . . . intentionally prevent[] or hinder[] another from placing an emergency call. . . ." Minn. Stat. Ann. § 609.798(2) (West 2015). Minnesota law provides in pertinent part that whoever "intentionally prevents or dissuades or attempts to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime" is guilty of tampering with a witness. Minn. Stat. Ann. § 609.498(1)(d) (West 2022). Minnesota law defines obstructing legal process in pertinent part as "obstruct[ing], hinder[ing], or prevent[ing] the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense . . . ." Minn. Stat. Ann. § 609.50(1) (West 2022).

Based on our review of the applicable statutory provisions, the Applicant's arguments are unpersuasive. First, there is no language in Minn. Stat. Ann. section 609.798 requiring the use of

force or threats of injury, as required under Minn. Stat. Ann. section 609.498(1)(d), and we therefore conclude that interference with an emergency call is not substantially similar in its nature and elements to the qualifying crime of tampering with a witness under Minnesota law. Furthermore, Minn. Stat. Ann. section 609.50 requires obstructing, hindering, or preventing the lawful execution of a legal process, whereas Minn. Stat. Ann. section 609.798 instead requires only the interruption, disruption or interference of an emergency call, distinct elements under Minnesota law. *See* Minn. Stat. Ann. § 609.798 (defining "emergency call" as "a 911 call; . . . any call for emergency medical or ambulance service; or . . . any call for assistance from a police or fire department or for other assistance needed in an emergency . . . ."); *see also State v. Krawsky*, 426 N.W.2d 875, 877 (Minn. 1988) (highlighting that Minnesota's obstruction of justice statute was "directed solely at physical acts" that interfere with a police officer in the performance of their duties). Accordingly, and on the basis of the above, interfering with a 911 call under Minn. Stat. Ann. section 609.798 is not substantially similar in its nature and elements to the qualifying crimes of witness tampering or obstruction of justice as contemplated by 8 C.F.R. § 214.14(a)(9).

III. CONCLUSION

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 criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.