U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20612339

Date: MAR. 31, 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 he was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief asserting that he 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 remand the matter to the Director for the issuance of a new decision.

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)(1). 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 Evidence and Procedural History

The Petitioner filed his U petition in November 2016 with a Supplement B signed and certified by the Chief of the [redacted] Police Department in the state of Maryland (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Other: Commercial Robbery" and wrote in sections 3-403 (robbery with a dangerous weapon) and 7-104 (theft) of the Maryland Criminal Law Code (Md. Code Ann.) as the specific statutory citations investigated and/or prosecuted. The certifying official described the incident and any known or documented injuries to the Petitioner as follows:

> "[On [redacted] 2008, the Petitioner] was a victim of robbery with an implied weapon. The next day, he was again a victim of theft. Both incidents, as well as additional incidents, attached, occurred while he worked at 7-11. [The Petitioner] suffered extreme stress and anxiety as a result of being the victim of repeated thefts, robbery (armed implied) while working at the Seven Eleven. He had difficulty sleeping and eventually could not continue in his employment."

The incident report from the [redacted] Police Department identified the crime as "Commercial Robbery (Strong Arm)". As noted by the Director, the narrative portion of the incident report indicated that the Petitioner was working as a cashier when the perpetrator entered the convenience store, pushed the Petitioner in the chest and implied that he possessed a weapon by having his hand in his pocket. The perpetrator then stole a money till from underneath the cashier's desk and immediately fled the scene.

In response to a request for evidence (RFE) from the Director, the Petitioner submitted a personal statement, a brief from counsel, copies of statutory provisions of the Md. Code Ann., several court decisions, and personal medical documentation. The Petitioner recounted the details of the robbery and also stated "I recall that the perpetrator had a gun, but the police report does not state that the robber had a gun." The Director considered this documentation and determined that law enforcement detected, investigated, or prosecuted, and he was the victim of, robbery with a dangerous weapon

[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.

under Maryland law, which the Director concluded is not a qualifying crime or substantially similar to a qualifying crime.

B. Qualifying Criminal Activity

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

Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act require 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. 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 . . . .").

As noted by the Director, the Petitioner has not established that law enforcement detected, investigated, or prosecuted a felonious assault or any other qualifying crime as perpetrated against him. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, robbery with a dangerous weapon.

At the outset, the Petitioner argues that the factual circumstances of the crime establish that he was the victim of the qualifying crime of felonious assault. He highlights that the perpetrator "committed an assault in that he committed a battery" and that the "assault was elevated to [a felony] because the perpetrator used a gun." This argument is unavailing, however, as 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 discussed further below, there is no evidence in the record establishing that law enforcement actually detected, investigated, or prosecuted any type of felonious assault in this case.

The Petitioner further argues that he has established he was the victim of the qualifying crime of felonious assault because the certifying official signed and certified a Supplement B indicating that felonious assault was detected, investigated, or prosecuted. We acknowledge that in 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 "Felonious Assault." However, a certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of

qualifying criminal activities represent general categories of crimes and not specific statutory violations). Here, the Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault 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").

In part 3.3, the certifying official cited to robbery with a dangerous weapon under section 3-403 of the Md. Code Ann. as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner; the certifying official did not cite to any provision involving assault under Maryland law. Moreover, the remaining evidence in the record does not reference any assault provisions under Maryland law or otherwise indicate that a felony-level assault crime was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. As noted above, the police report accompanying the Supplement B identified the incident as a "Commercial Robbery (Strong Arm)." Accordingly, the Petitioner has not met his burden of establishing, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted felonious assault or any other qualifying crime as perpetrated against him.

The Petitioner last argues that he was assaulted in the course of the commission of another felony—robbery—thereby establishing that law enforcement detected, investigated, or prosecuted, and he was the victim of, felonious assault. Relatedly, he argues that "Maryland criminalized 'assault with intent to rob' as a felony prior to 1996." The Petitioner cites to Maryland state case law in support of this assertion.[2] It is undisputed that the Petitioner was the victim of a robbery and that during the course of the robbery, he suffered an "assault" when pushed by the perpetrator. However, contrary to the Petitioner's arguments on appeal, 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). Borrowing from the analysis above, the Petitioner has not submitted sufficient evidence to establish that law enforcement at any time detected, investigated, or prosecuted a felony-level assault or the legacy crime of assault with intent to rob as perpetrated against the Petitioner. Section 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. Instead, the record indicates that law enforcement detected, investigated, or prosecuted, and he was the unfortunate victim of, robbery with a dangerous weapon.

2. Robbery with a Dangerous Weapon under Maryland Law is Substantially Similar to the Qualifying Crime of Felonious Assault

[2] The Petitioner further discussed the criminal statutory schemes of the District of Columbia and Georgia in support of this assertion. However, the relevant crime perpetrated against the Petitioner took place in Maryland, and was investigated by the [redacted] Police Department. The record does not indicate, and the Petitioner does not assert on appeal, that the relevant offense occurred in more than one jurisdiction or crossed state lines such that the statutory schemes of the District of Columbia or Georgia are relevant in this case.

The crime of robbery with a dangerous weapon is not specifically listed as a qualifying crime at section 101(a)(U)(15)(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. 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 states, through counsel, that the nature and elements of armed robbery with a dangerous weapon and first-degree assault, a Maryland state equivalent to the qualifying crime of felonious assault are substantially similar in their nature and elements as contemplated by 8 C.F.R. § 214.14(a)(9). These statutory provisions are listed below for purpose of comparison.

At the time of the offense against the Petitioner, section 3-403 of the Md. Code Ann. defined robbery with dangerous weapon as follows:

> (a) A person may not commit or attempt to commit robbery under [section] 3-402 of this subtitle:
> (1) with a dangerous weapon; or
> (2) by displaying a written instrument claiming that the person has possession of a dangerous weapon.

Md. Code. Ann. § 3-403 (West 2008).

Section 3-202 of the Md. Code Ann. defined assault in the first degree, in pertinent part, as follows:

> (a)(1) A person may not intentionally cause or attempt to cause serious physical injury to another.
> (2) A person may not commit an assault with a firearm, including:
> (i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short-barreled rifle . . . . ;

Md. Code Ann. § 3-202 (West 2008).

As highlighted by the Petitioner, the Maryland Court of Special Appeals has held that armed robbery and felonious assault of the use of a firearm modality are substantially similar. In *Morris v. Maryland*,

the Court of Special Appeals held that "first-degree assault is 'a lesser included offense of robbery with a dangerous and deadly weapon.'" 993 A.2d 716, 738 (Md. App. 2010) (quoting *Williams v. Maryland*, 979 A.2d 184, 187-88 *cert. denied*, 984 A.2d 245 (Md. App. 2009)). In *Williams*, the Court of Special Appeals likewise stated that first degree assault was "a lesser included offense of robbery . . . . with a dangerous and deadly weapon." *Williams*, 979 A.2d at 187-88. Based on our review of the applicable statutory provisions previously discussed as well as pertinent state case law referenced herein, we determine that the Petitioner has established, by a preponderance of the evidence, that the crime of robbery with a dangerous weapon is substantially similar to first degree assault in Maryland. Therefore, it is our determination that the Petitioner was indeed the victim of qualifying criminal activity.

III. CONCLUSION

The Petitioner has established that law enforcement detected, investigated, or prosecuted, and he was the victim of, robbery with a deadly weapon, a crime substantially similar to the qualifying crime of felonious assault. Accordingly, we withdraw the Director's decision and remand the matter for the Director to determine whether the Petitioner has met his burden of establishing the remaining eligibility criteria for U nonimmigrant status.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.