U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20186663

Date: MAR. 31, 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and we dismissed the Petitioner's subsequent appeal, concluding that the Petitioner does not qualify as a victim of qualifying criminal activity. The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. Upon review, we will dismiss the motions.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish 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.

A "victim of qualifying criminal activity" is defined as a person who is directly or proximately harmed by the commission of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14). Parents of a direct victim, who was under 21 years of age at the time the qualifying criminal activity occurred, will also be considered victims of qualifying criminal activity, if the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, such that he or she is unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i).

A U petition must be filed with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying that a petitioner possesses information concerning and "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of qualifying criminal activity.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i).

[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.

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and the petitioner bears the burden of proof 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)(1) and (4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Although a petitioner may submit any evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The record indicates that S-E-O-,[2] the Petitioner's now-stepchild, was the victim of the qualifying crimes of abusive sexual contact and sexual assault when she was a young child. In our prior decision dismissing the Petitioner's appeal, incorporated here by reference, we determined that the Petitioner had not demonstrated that he qualifies as a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i) because he was S-E-O-'s stepparent, and thus did not have a qualifying relationship with her, at the time the qualifying criminal activity occurred. We further determined that, assuming *arguendo* that the Petitioner had established that he was S-E-O-'s stepparent at the time the qualifying criminal activity occurred, he had not submitted sufficient evidence to establish that she was incapacitated or incompetent as contemplated by 8 C.F.R. § 214.14(a)(14)(i).

On motion, the Petitioner first contends that he was a victim of qualifying criminal activity because, while he was not S-E-O-'s stepparent at the time she was victimized, on or about 1994, he was her stepparent at the time the abuse was reported to authorities, in 2010, and at the time the U petition was filed, in 2017.

As stated above, a parent may be eligible for U-1 status as a victim of qualifying criminal activity if the direct victim, who was under 21 years of age at the time the qualifying criminal activity occurred, is incompetent or incapacitated, and therefore unable to assist in the investigation or prosecution of the qualifying crime. 8 C.F.R. § 214.14(a)(14)(i). Contrary to our decision on appeal, to qualify as a victim of qualifying criminal activity as the parent of S-E-O-, the Petitioner must establish that he was her stepparent on the filing date of the U petition, rather than when the qualifying criminal activity occurred. *See* sections 101(b)(1)(B) (defining "child" to include "a stepchild, whether or not born out of wedlock, provided that the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred") and (b)(2) of the Act (stating that the terms "'parent', 'father', or 'mother' mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection"); 8 C.F.R. § 103.2 (providing that "an applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request . . . ."). The present record establishes that S-E-O- was under the age of 18 at the time the Petitioner married

[2] We use initials to protect privacy.

her mother in 2006, establishing the stepparent/stepchild relationship. The record further reflects that the marriage took place prior to the filing of the U petition in 2017. However, beyond the requisite relationship, the Petitioner must additionally establish that S-E-O- was incompetent or incapacitated, and therefore unable to assist in the investigation or prosecution of the qualifying crime, as contemplated by 8 C.F.R. § 214.14(a)(14)(i).

In this regard, the Petitioner reasserts on motion an argument previously considered on appeal—that we should consider S-E-O-'s age at the time the qualifying criminal activity occurred rather than her age at the time of reporting the criminal activity to law enforcement, or at the time of filing, in determining her incapacity or incompetency as a minor child. The Petitioner further asserts that, regardless, "[i]t was not until [he] came into [S-E-O-'s] life and assisted her through her anxiety and trauma that she was able to report her assailant. In 2010, when S-E-O- filed her report against her assailant it was only because she found the necessary love, support, and strength to do so by the guidance provided by [the Petitioner]. Without his assistance, S-E-O- would have never been able to report the incident." He submits a letter from S-E-O- in support this assertion, whereby she states that "having [her] stepfather in [her] life made talking about the molestation more informal. Looking back when all this transpired[, she] would not have come forward if it wasn't for [her] stepfather. He helped [her] through the investigation process with the detective."[3]

We acknowledge the Petitioner's arguments and the additional evidence submitted on motion. However, the relevant regulations expressly tie the incompetency and incapacity of the direct victim to being "unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity." 8 C.F.R. § 214.14(a)(14)(i); *see also* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53017 (discussing 8 C.F.R. § 214.14(a)(14)(i) including, as victims of qualifying criminal activity, the parents of incompetent or incapacitated direct victims, because "[i]n those situations, the direct victim is *not available or sufficiently able* to help in the investigation or prosecution of the criminal activity") (emphasis added). Contrary to the Petitioner's arguments on motion, the evidence in the present case indicates that S-E-O- was both available and able to provide information concerning and be helpful in the investigation and prosecution of the crime committed against her.

The Supplement B submitted with the Petitioner's U petition was signed and certified by the Captain of the Special Victims Bureau at the [redacted] Sheriff's Department in [redacted] California (certifying official). On 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 "Abusive Sexual Contact" and "Sexual Assault." Where asked to provide a description of the criminal activity being investigated or prosecuted and any known or documented injuries, the certifying official referenced S-E-O-, indicating in relevant part that "[the v]ictim was six years old when suspect molested her multiple times" and that she suffered "emotional trauma" as a result. Where asked to describe the Petitioner's

[3] The Petitioner's counsel further cites to an unpublished decision to demonstrate that the role of a victim as contemplated by 8 C.F.R. § 214.14(a)(14)(i) can include details of their participation and the role they played in supporting the direct victim. However, the cited decision was not published as precedent and, accordingly, does not bind USCIS in future adjudications. *See* 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act"). 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.

helpfulness to law enforcement, the certifying official again referenced only S-E-O-, indicating that "[t]he victim was cooperative with law enforcement. The information she provided was very helpful and pertinent towards the investigation." In part 5.2 of the Supplement B, the certifying official listed S-E-O- as the Petitioner's daughter and indicated her "involvement" as the "direct victim."

An incident report accompanying the Supplement B indicates that the Petitioner's spouse, S-E-O-'s mother, reported a "sex crime" in May 2010 that occurred to S-E-O- when she was seven years old. The same incident report further states that upon the officer contacting the Department of Children and Family Services (DCFS), the social worker advised that "because the victim is an adult, she can report it on her own. Therefore, DCFS will not issue a referral number." In response to the Director's request for evidence (RFE), the Petitioner submitted a Supplemental Report from a Detective of the [redacted] Sheriff's Department, Special Victims Bureau/Child Abuse Detail, dated July 2010. In this report, the Detective details the interview with S-E-O- in May 2010, at her home in Colorado, where she alone provided all of the details concerning her sexual abuse as a child. In a follow-up Supplemental Report, the same Detective met with S-E-O- in April 2011, while she was visiting her mother's home in California. At that time, S-E-O- alone conducted three pretext phone calls with the perpetrator seeking a confession or admission of guilt. The Petitioner then submitted the electronic docket of the court proceedings against the perpetrator in the Superior Court of California, [redacted] which began in [redacted] 2012. The docket indicates that the perpetrator received a jury trial where S-E-O- herself testified against the perpetrator and he was found guilty of the crime of continuous sexual abuse in [redacted] 2013. While we acknowledge the Petitioner's assertion that S-E-O- would not have reported the crime without his support, and the evidence he submits in support of that assertion, the record otherwise indicates that S-E-O- was available and able, and in fact did, provide information concerning and meaningfully assist in the investigation and prosecution of the qualifying criminal activity committed against her.

Accordingly, on motion, the Petitioner has not demonstrated that S-E-O- was incapacitated or incompetent and therefore unable provide the required assistance in the investigation or prosecution of the crime. Consequently, he does not qualify as a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i).[4]

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.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] The Petitioner makes further arguments on motion regarding his helpfulness in the investigation or prosecution of qualifying criminal activity and other eligibility criteria. However, because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding these issues. *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 an applicant is otherwise ineligible).