U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22836217

Date: NOV. 30, 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 record did not establish that the Petitioner was the victim of a qualifying crime, or a crime substantially similar to a qualifying criminal activity. The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a statement. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As stated in our decision on appeal, to establish eligibility for U 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. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term "investigation or prosecution" of a 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).

"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. 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). It is the Petitioner's burden to establish eligibility for the requested benefit 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, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed her U petition in January 2016, accompanied by a Supplement B that was signed and certified by the Chief of the Town of [redacted] Police Department in [redacted] Wisconsin (certifying official) in July 2015, based on criminal activity committed against the Petitioner in [redacted] 2011. In part 3.1 of the Supplement B, the certifying official marked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Other." At part 3.3, the certifying official cited to sections 346.63(1)(a),[1] 346.63(1)(b), and 346.63(2)(a)1-(a)2 of the Wisconsin Statutes (Wis. Stat. Ann.), relating to offenses for operating while under the influence of intoxicants or other drugs, as the specific statutory citations for the offenses investigated or prosecuted as perpetrated against the Petitioner. The accident report accompanying the Supplement B indicates the Petitioner was the victim of a motor vehicle accident where the perpetrator was cited for violation of Wis. Stat. Ann. §§ 346.63(2)(a)1 and 346.63(1)(b), relating to offenses involving driving under the influence, and section 346.57(2), relating to speeding violations. The criminal court complaint accompanying the Supplement B indicates that the perpetrator was charged with two counts of operating while under the influence of an intoxicant (OUI) causing injury (a second and subsequent offense), a felony in violation of sections 346.65(3p), 346.63(2)(a)1, and 939.50(3)(h) of the Wis. Stat. Ann., and two counts of operating with prohibited alcohol concentration causing injury (a second and subsequent offense), a felony in violation of sections 346.65(3p), 346.63(2)(a)2, and 939.50(3)(h) of the Wis. Stat. Ann. The perpetrator was also charged with two misdemeanor offenses of operating with prohibited alcohol concentration (second offense) under sections 346.63(1)(b) and 346.65(2)(am). Court records indicate that the perpetrator was convicted of two counts of OUI-causing injury (first offense), a misdemeanor in violation of Wis. Stat. Ann. § 346.63(2)(a)1. The Director denied the U petition, concluding that the record demonstrated that the Petitioner was the victim of the misdemeanor offense of OUI-causing injury under Wis. Stat. Ann. § 346.63(2)(a)1, which is not a qualifying crime and is not substantially similar to the state equivalent of the qualifying crime of felonious assault under Wisconsin law.

[1] While this citation is not indicated in our previous decision, we note that it is also listed in the Supplement B.

In our prior decision, incorporated here by reference, we determined that the Petitioner did not meet her burden of establishing that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault in Wisconsin, as being perpetrated against her, and that she was a victim of said crime, as she asserted. We acknowledged that the certifying official checked a box on the Supplement B indicating that the Petitioner was a victim of criminal activity involving or similar to felonious assault and that felony aggravated battery under Wis. Stat. Ann. § 940.19 is the state equivalent to felonious assault, as argued by the Petitioner on appeal. However, the Supplement B, when read as a whole and in conjunction with other evidence in the record, did not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault (or the state equivalent of felony aggravated battery) 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"). Instead, we determined that the record showed law enforcement detected, investigated, or prosecuted, and the Petitioner was the victim of, OUI-causing injury under Wis. Stat. Ann. § 346.63(2)(a)1, and operating a motor vehicle with a prohibited alcohol concentration under Wis. Stat. Ann. § 346.63(1)(b), during a car accident caused by an individual under the influence of alcohol that resulted in numerous physical injuries to the Petitioner. The Supplement B did not cite to or reference any felony-level assault or battery provision under Wisconsin law as detected, investigated, or prosecuted as perpetrated against the Petitioner; indeed, the Supplement B cited to sections of the Wisconsin Statutes relating to offenses for operating while under the influence of intoxicants or other drugs as the specific statutory citations for the offenses investigated or prosecuted as perpetrated against the Petitioner. The remaining law enforcement documentation in the record likewise made no reference to any felony-level assault or battery provision under Wisconsin law.

Further, we acknowledged the Petitioner's assertion that, although the crimes identified in the law enforcement documentation do not include felonious assault, or the Wisconsin equivalent crime of aggravated battery, the facts of the criminal activity involved show that she was a victim of an aggravated battery involving the use of a vehicle as a dangerous weapon, as defined by the Wisconsin Statutes. However, we found this did not alter our analysis, as evidence describing what may appear to the Petitioner to be, or hypothetically could have been investigated or charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence indicating, by a preponderance of the evidence, that relevant law enforcement authorities in fact detected, investigated, or prosecuted the qualifying crime 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 . . . ."). Accordingly, we concluded that the record did not sufficiently establish that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault, or any other qualifying crime, as perpetrated against the Petitioner. We also concluded that the OUI crimes detected by law enforcement are not qualifying criminal activities.

B. Motion to Reconsider

In support of her motion to reconsider, the Petitioner submits a brief statement within the Form I-290B, Notice of Appeal or Motion, asserting that we erred as a matter of law "by requiring that a felony conviction for assault is required to constitute qualifying criminal activity." The Petitioner indicates that the Act allows for similar activity to felonious assault to constitute qualifying criminal activity,

which she maintains applies in this case because Wisconsin does not have an assault statute, as previously discussed in the record. She again asserts that the Supplement B certifies that she was the victim of felonious assault and the record shows that the police investigated multiple felony offenses, resulting in the offender being charged with four felony offenses and six criminal counts in the criminal complaint. The Petitioner contends that the investigation of offenses similar to felonious assault is what is required, not conviction of those offenses.

While we acknowledge that the Petitioner is correct that a conviction for an offense substantially similar to felonious assault is not specifically required to establish that the crime perpetrated against her is a qualifying crime, the Petitioner erroneously argues that our decision on appeal indicated this was a requirement. As noted above, in our decision on appeal, we expressly agreed with the Petitioner's assertion that felony aggravated battery under section 940.19 of the Wis. Stat. Ann. is the state equivalent of felonious assault in Wisconsin, but found that the record did not establish that law enforcement detected, investigated, *or* prosecuted the qualifying crime of felonious assault or state equivalent of felony aggravated battery, or any other qualifying crime, as perpetrated against the Petitioner. (Emphasis added). As our previous decision explained, the record indicates that the only crimes which law enforcement detected, investigated, or prosecuted as perpetrated against the Petitioner were OUI offenses, none of which are qualifying criminal activities.

The Petitioner also does not cite any other error in our application of law or USCIS policy in our previous decision, nor does she cite pertinent precedent or adopted decisions that establish our prior decision was in error based on the record at the time. Therefore, the Petitioner has not satisfied the requirements for a motion to reconsider.

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 motion to reconsider is dismissed.