U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23551003

Date: JAN. 5, 2023

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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 Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the Petitioner was not a victim of qualifying criminal activity, or a crime substantially similar to a qualifying criminal activity. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 nonimmigrant classification, petitioners must establish that they were a victim of qualifying criminal activity that was detected, investigated, or prosecuted by law enforcement. Section 101(a)(15)(U)(i) of the Act; 8 C.F.R. § 214.14(a)(5). Qualifying criminal activity includes 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). When a certified offense is not a qualifying criminal activity specifically listed 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. 8 C.F.R § 214.14(a)(9). 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)(l5)(U)(iii) of the Act. *Id.*

II. ANALYSIS

The Petitioner sought U nonimmigrant classification claiming he was the victim of robbery under section 160.15 of the New York Penal Law (NYPL) and that it was substantially similar to felonious assault as defined by federal law. The Director denied the Petitioner's Form I-918 after determining that the Petitioner was the victim of robbery in the first degree under section 160.15 of the NYPL,

which was not a qualifying criminal activity and was not substantially similar to first- or second-degree assault under sections 120.05 and 120.10 of the NYPL. The Director also concluded that no felonious assault was otherwise detected, investigated, or prosecuted by law enforcement. On appeal, the Petitioner agrees that section 160.15 of the NYPL was the crime detected and investigated by law enforcement but claims that USCIS erred in its conclusion that section 160.15 was not substantially similar to felonious assault because the Petitioner was seriously harmed during the incident. The Petitioner also asserts that section 160.15 is substantially similar to the federal definition of assault found under 18 U.S.C. § 113(a)(2).

The record establishes and the Petitioner does not dispute that robbery pursuant to section 160.15 of the NYPL was the crime detected and investigated in this case and that it is not listed as a qualifying criminal activity in section 101(a)(15)(U)(iii) of the Act. As noted above, when a certified offense is not a qualifying criminal activity specifically listed 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. While the Petitioner asserts robbery is substantially similar to felonious assault in part because of the injuries he suffered, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the "nature and elements" of the crime that was investigated with a qualifying crime. *See* 8 C.F.R. § 214.14(a)(9) (describing the process to determine similarities between two statutes). Additionally, mere overlap with, or commonalities between, the certified offense and the statutory equivalent, however, is not sufficient to establish that the offense involved or was substantially similar to a qualifying crime. The Petitioner's claim that section 160.15 of the NYPL is substantially similar to felonious assault because of any injuries he suffered is therefore insufficient to establish that robbery is substantially similar to felonious assault.

The Petitioner's assertion that robbery under section 160.15 of the NYPL is substantially similar to assault as defined by 18 U.S.C. § 113(a)(2) is also unavailing. Section 160.00 of the NYPL defines robbery as "forcible stealing." The same section then states that a person "forcibly steals *property* and commits a robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force...for the purpose of preventing or overcoming resistance to the taking of the *property*...or compelling the owner of such *property* or another person to deliver up the *property* or to engage in other conduct which aids in the commission of the larceny." (emphasis added). Section 160.15 incorporates this definition of robbery and is distinguished from other robbery offenses found in the NYPL based on the presence of aggravating factors, including whether there is injury or use of a weapon, that determine the severity of the punishment. *See People v. Gordon*, 23 N.Y.3d 643, 649-50 (2014); *compare* NYPL §§ 160.05, 160.10, and 160.15. By comparison, section 113 of Title 18 of the United States Code makes it a crime to commit an assault and defines respective punishments for committing an assault depending on the inclusion of additional criteria. Section 113(a)(2) specifically makes it a crime to commit an assault with intent to commit any felony except murder or sexual abuse. "Assault" is not defined in the United States Code, however federal courts have defined it as "either a willful attempt to inflict injury upon the person of another, or a threat to inflict injury upon the person of another, which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm." *United States v. Chestaro*, 197 F.3d 600, 605 (2d Cir. 1999).

Robbery in the NYPL involves taking property from someone and does not necessarily require any actual or threat of injury, even when committed in the first degree, whereas assault in the United States Code involves an attempted infliction or threat of injury and does not require a taking of property. *See Gordon*, 23 N.Y.3d at 650 (stating the applicable culpability standard for robbery in New York requires that the defendant's conscious objective is to compel the victim to deliver property or overcome resistance to the taking). Because the nature and elements of robbery under section 160.15 of the NYPL are distinct from assault under 18 U.S.C. § 113(a)(2), the Petitioner has not established he was the victim of a crime that is substantially similar to felonious assault.

III. CONCLUSION

The Petitioner has not demonstrated that he was the victim of a qualifying crime or an offense that is substantially similar to a qualifying crime. U nonimmigrant 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 appeal is dismissed.