U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22993517

Date: JAN. 12, 2023

Motion on Administrative Appeals Office 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. We dismissed the Petitioner's subsequent appeal, finding that the Petitioner had not established that she was the victim of a qualifying crime. The matter is now before us on motion to reconsider. 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). Upon review, we will dismiss the motion to reconsider.

A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (USCIS) 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 benefit sought.

The issue before us is whether the Petitioner has established on motion that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Petitioner has not established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy.

In our decision to dismiss the appeal, while we acknowledged that the certifying official checked a box on the initial and updated Supplement Bs 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, we determined that when read as a whole and in conjunction with other evidence in the record, the record did 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").

We also determined on appeal 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—was not substantially similar to witness tampering under Minn. Stat. Ann. section 609.498 or obstruction of justice under Minn. Stat. Ann. section 609.50. Specifically, we noted that 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 concluded 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.

On motion, the Petitioner asserts that we erred when we determined that interfering with an emergency call was not substantially similar to witness tampering and obstruction of justice under Minnesota law. The Petitioner maintains on motion that the perpetrators' conduct of surrounding the Petitioner, verbally assaulting her by threatening her, and instilling fear in her are substantially similar to "intentionally prevents....attempts to prevent...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. Witness Tampering, Minn. State section Ann. 609.498(1)(d)." Moreover, by preventing, obstructing, and hindering the Petitioner's ability to call law enforcement to help her, the perpetrators denied the police or law enforcement an opportunity to help the Petitioner by arresting or apprehending the perpetrators for robbing and assaulting her, conducts that are "substantially similar to obstruction of legal process."

While we do not diminish the fear the Petitioner may have experienced during, and as a result of, the incident, 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 the certifying law enforcement agency detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner under the criminal laws of its jurisdiction. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. *See id.*

As we detailed in our decision to dismiss the appeal, 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. *Id.* 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). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Contrary to the Petitioner's assertions on motion, the regulatory definition of "any similar activity" forestalls a fact-based inquiry into whether underlying conduct or facts identified by the certifying agency in its investigation may or may not establish "the existence of a qualifying criminal activity," or whether such activity occurred. The Petitioner's contention on motion that we may undergo a fact-based inquiry in determining the substantial similarity of the criminal offenses disregards the fact that the regulatory definition of "any similar activity" requires that both the "nature and elements" of the two offenses have to be substantially similar. Thus, our determination on appeal that the elements are not substantially similar under a statutory comparison necessitates a conclusion that the offense of interfering with an emergency call is not substantially similar to witness tampering or obstruction of justice under Minnesota law.

The Petitioner has not shown that our previous decision on appeal was based on an incorrect application of law or USCIS policy or that it was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). Accordingly, the Petitioner has not overcome our previous determination that she has not shown that she was the victim of qualifying criminal activity.

ORDER: The motion to reconsider is dismissed.