U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26509206

Date: JUNE 1, 2023

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity pursuant to 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 U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity. 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 criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3. 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-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.

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).

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)(15)(U)(iii) of the Act. *Id.*

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 that the petitioner possesses information concerning the qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of it.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Although petitioners may submit any relevant, credible evidence for the agency to consider, U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the credibility of and weight given to all the evidence. 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 January 2016. In the underlying record, the Petitioner submitted a Supplement B, certified in December 2015 by a lieutenant (certifying official) in the State of California's [redacted] Police Department, the [redacted] Division (certifying agency). In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the certifying official checked the box for "Felonious Assault" and "Other: Criminal Threats." The certifying official identified in Part 3.2 that the date the criminal activity occurred was April 2013. Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, was left blank. In Part 3.6, which requests a description of the criminal activity being investigated or prosecuted, the certifying official stated that the:

> suspect stood in front of the [Petitioner's] residence and asked the witness to tell the [Petitioner] to come outside. The suspect told the witness that he was going to kill the [Petitioner] because the [Petitioner] visited the suspect's girlfriend. The suspect appeared intoxicated and he was carry[ing] a hammer and had a knife in his waistband.

The Petitioner included an investigative report which identified "criminal threats" as the basis of the report and provided, in relevant part, that the Petitioner was asleep when a witness told him that a man just left who wanted to kill him. According to the report, the witness stated: the suspect was on the front lawn carrying a hammer; the suspect was intoxicated and angrily demanded that the Petitioner step out of the home and said he was going to kill the Petitioner for visiting his girlfriend; the suspect showed the witness a knife and stated he also had a gun; the witness did not observe a gun; the suspect left after realizing the Petitioner was not coming.

In response to the Director's request for evidence (RFE), the Petitioner submitted an updated Supplement B, certified in May 2022 by a commanding officer (second certifying official) in the

[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.

certifying agency. The updated Supplement B differs from the original as follows: in response to Part 3.1 of the updated Supplement B, the second certifying official checked the boxes for "Attempt to Commit Any of the Named Crimes" and "Felonious Assault." In response to Part 3.3, the second certifying official cited California Penal Code (Cal. Penal Code) section 422, titled "criminal threats." In Part 3.6, the second certifying official stated that the "suspect told the witness he had a gun when he brandished a knife and hammer [and] threatened to kill the victim."

In August 2022, the Director denied the U petition, determining that the Petitioner was not a victim of a qualifying criminal activity because the record evidenced that the crime investigated was criminal threats, which is not an enumerated crime or substantially similar to an enumerated crime under section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9). The Director explained that the investigative report does not indicate that an assault took place, which is an element of felonious assault, or that felonious assault was detected or investigated by law enforcement. The Director also determined that the nature and elements of criminal threats and felonious assault are not substantially similar. On appeal, the Petitioner asserts that the crime of criminal threats is substantially similar to felonious assault and the Director erred in concluding an assault did not take place.

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

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

On appeal, the Petitioner argues that the Director erred in concluding that law enforcement did not detect, investigate, or prosecute, and that he was not the victim of, the qualifying crime of felonious assault. We acknowledge that both certifying officials checked the box in Part 3.1 of the Supplement Bs corresponding to "felonious assault" as the qualifying criminal activity. However, a certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is or was 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 Supplements B, when read as a whole and in conjunction with other evidence in the record, do 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 this regard, neither certifying official listed or cited to any assault provision under California law, felonious or otherwise, in Part 3.3 of the Supplements B or elsewhere in the record; the first certifying official provided no citation, and the second certifying official listed the statute for criminal threats under Cal. Penal Code section 422. The police report that was submitted with the U petition identifies criminal threats as the basis of the investigative report. In addition, the Supplements B summaries and the investigative report do not use the term assault, reference any assault taking place, or discuss the elements of assault.

In these proceedings, the Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Chawathe*, 25 I&N Dec. at 375. Moreover, 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). Considering the totality of the evidence in the record, the Petitioner has not established by a preponderance of the evidence that that law enforcement detected, investigated, or prosecuted the qualifying crime of 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, criminal threats under California law.[2]

To the extent that the Petitioner argues that the factual circumstances of the incident establish that he was the victim of felonious assault under California law, 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 noted above, the Petitioner has not established that the certifying agency detected, investigated, or prosecuted any qualifying crime as having been perpetrated against him. Moreover, neither of the Supplements B cite to or reference any California assault provisions and the accompanying police report did not reference the detection, investigation, or prosecution of any type of assault under California law. Therefore, the Petitioner has not established that the was victim of a felonious assault or any other qualifying crime under section 101(a)(15)(U)(iii) of the Act.

C. Criminal Threats Under California Law is Not Substantially Similar to the Qualifying Crime of Felonious Assault

The Petitioner also contends that he was the victim of qualifying criminal activity because the nature and elements of criminal threats under California law are substantially similar to those of felonious assault under California law. 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

[2] Because the evidence in the record reflects that the only crime detected, investigated, or prosecuted as perpetrated against the Petitioner was criminal threats, it necessarily follows that the Petitioner was not the victim of an attempted felonious assault.

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).

At the time of the offense, Cal. Penal Code section 422 defined criminal threats, in relevant part, as:

> Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety . . . .

California defines assault under Cal. Penal Code section 240 as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." Cal. Penal Code §240 (2013). For an assault to rise to a felony under Cal. Penal Code section 245, the presence of an aggravating factor is required, for instance, the use of a deadly weapon, firearm, or machine gun, or by any means of force likely to produce great bodily injury. *See* Cal. Penal Code § 245(a)-(d).

The Petitioner asserts that criminal threats can be prosecuted as a felony when a deadly weapon is involved, which is similar to the aggravating factor necessary for felonious assault. However, sharing a similar requirement of an aggravating factor in order to be punished as a felony does not in and of itself make the crimes themselves substantially similar. Under California law, the qualifying crime of felonious assault requires the element of assault, defined as a present ability to commit a violent injury, while the statute for criminal threats encompasses threats made verbally, in writing, or by means of an electronic communication device. Based on the foregoing, the nature and elements of the two crimes are not substantially similar. The Petitioner has thus not established by the preponderance of the evidence that he was the victim of felonious assault or any other qualifying criminal activity.

III. CONCLUSION

The Petitioner has not demonstrated that the certifying agency detected, investigated, or prosecuted qualifying criminal activity as listed in section 101(a)(15)(U)(iii) of the Act as having been committed

against him or that he is a victim of a crime involving or substantially similar to a qualifying criminal activity. As such, he is not eligible for classification as a U-1 nonimmigrant.

ORDER: The appeal is dismissed.