U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25801636

Date: May 19, 2023

Appeal of Nebraska Service Center 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) as a victim of qualifying criminal activity.

The Director of the Nebraska Service Center (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner was not a victim of qualifying criminal activity, or a crime substantially similar to a qualifying criminal activity. The Director also denied a motion to reopen and reconsider their decision.

The matter is now before us on appeal of the denial of the motion to reopen and reconsider the decision.[1] On appeal, the Petitioner submits a brief discussing the evidence in the record as it applies to the applicable law. She asserts that she was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office (AAO) reviews 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 remand the matter to the Director for issuance of a new decision.

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. The burden of proof is on a petitioner 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)(4); Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

[1] Although the Petitioner's representative styled their appeal as a motion to reopen and reconsider, we construe it as an appeal and apply the standard of review for appeals, de novo review.

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). 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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In May 2016, the Petitioner filed the instant U petition with a Supplement B signed and certified by the Assistant Chief of Investigations of the [redacted] Police Department, as well as other documentation claiming that in [redacted] 2012, she was the victim of robbery under Revised Code of Washington (RCW) section 94.56.190 and Assault in the First Degree under RCW 9A.36.011, and that robbery under RCW section 94.56.190 is substantially similar to felonious assault.[2]

The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Other: Robbery." The certifying official cited to robbery under RCW section 94.56.190 and Assault in the First Degree under RCW section 9A.36.011 as the specific statutory citations investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that the Petitioner "was attacked by an unknown assailant. The suspect grabbed [the Petitioner's] necklace and ripped it from her neck as she was waiting at a bus stop. [Petitioner] was with her young son and was pregnant at the time. She fell down as a result of being robbed. The suspect then fled the scene."

In September 2021, in response to a request for additional evidence that the Petitioner was the victim of a qualifying crime, the Petitioner submitted a second Supplement B for the same incident that occurred in [redacted] 2012, which was certified by a different Assistant Chief of Investigations of the [redacted] Police Department. This certifying official cited to Robbery in the First Degree under RCW section 94.56.200 and Assault in the Second Degree under RCW section 9A.36.021(1)(e) as the specific statutory citations investigated or prosecuted.

[2] The Petitioner claims that she subsequently was a victim of a new incident listed as Robbery Street Gun, however no I-918 Supplement B certifying criminal activity was submitted for this crime and we will not consider it in connection with whether the Petitioner was the victim of a qualifying crime.

The police report underlying both Supplements B identifies the [redacted] 2012 incident as robbery-street-bodyforce, the type of physical injury detected was "apparent minor injury." The event was reported to the police five days after it occurred. The police report narrative states:

> On the above listed date at 1230 hours, the [redacted] Police Department Communications Section received a 911 call from the above listed victim who was reporting an unknown suspect grabbed the necklace she was wearing.
>
> The reporting officer responded to the location and contacted the victim. The victim advised on Tuesday [dated redacted], she was standing at the bus stop at [redacted] (just south of the intersection on the west side of the street), waiting for the bus. The victim advised as the bus approached she observed the above described suspect walk past her and look down the street as though he were looking for the bus. The suspect turned towards the victim, grabbed the necklace she was wearing and ripped it from her neck. The suspect fled the scene on foot eastbound through the parking lot located at.... The victim suffered a small scratch on her neck caused by the suspect when he grabbed the necklace. The victim did not request medical attention for the injury.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that she was the victim of qualifying criminal activity. The Director noted that robbery was the crime actually detected and investigated and that robbery is not a qualifying crime. The Director further determined that the Petitioner had not established that the nature and elements of robbery under Washington law are substantially similar to a qualifying criminal activity. The Director concluded that the Petitioner's submission did not demonstrate that felonious assault constituted the qualifying criminal activity, and that robbery did not constitute a qualifying criminal activity.

On motion to reopen and reconsider to the Director, the Petitioner argued the Director erred in determining she was not the victim of the qualifying crime of felonious assault because the certifying official indicated on the more recent Supplement B that the Petitioner was a victim of robbery and felony assault and that both those crimes were investigated or prosecuted according to that Supplement B. The Petitioner also argued that robbery under Washington law is substantially similar to the qualifying crime of felonious assault. The Director found those arguments unavailing and again denied the Petitioner's Form I-918 after determining that the Petitioner was not the victim of a qualifying criminal activity.

On appeal, the Petitioner asserts that she was the victim of the crime of robbery in the first degree because the perpetrator assaulted her while robbing her, causing bodily harm with the intent to commit a felony. In the alternative, the Petitioner contends that the crime to which she was subjected clearly qualifies because it was assault in the second degree with the intent to commit the felony of robbery. The Petitioner contends that the information in the police report shows that she was the victim of robbery involving physical assault on her, that she was injured, and that such criminal activity falls under the definition of assault in the second degree, and that the criminal activity described in the police report and certified on the Supplement B is substantially similar to felonious assault, one of the crimes enumerated at section 101(a)(15)(U)(iii) of the Act.

After a review of the entire record, we agree with the Petitioner that her case presents qualifying criminal activity.

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 . . .").

Under Washington State law a person also is guilty of assault in the second degree if the person, "[w]ith intent to commit a felony, assaults another . . .." Wash. Rev. Code § 9A.36.021(1)(e). Therefore, for law enforcement to detect, investigate, or prosecute a second-degree assault in Washington state, the perpetrator must: (1) intend to commit a felony under the revised code of Washington, (2) while also committing an assault.

The Petitioner claims that her assailant's underlying intent was to commit the felony offense of robbery in the first degree. Under Wash. Rev. Code § 9A.56.200(a)(1), an individual is guilty of robbery in the first degree if during the robbery, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury; or

(iv) He or she commits a robbery within and against a financial institution.

With respect to the specific robbery statute that was detected, investigated, or prosecuted, the certifying official stated on the second Supplement B that the intended theft of the necklace constituted robbery in the first degree under Wash. Rev. Code § 9A.56.200.[3] The police report reflects that the intent of the Petitioners' assailant was to rob her of her necklace, the suspect grabbed the necklace she was wearing and ripped it off her neck, causing a small scratch on the Petitioner's neck in the process. Therefore, the record shows that the assailant's intent was to commit a robbery

[3] Robbery in the first degree is a class A felony. Wash. Rev. Code § 9A.56.200(2).

and shows that bodily injury was inflicted. Consequently, the record reflects that law enforcement detected, investigated, or prosecuted first-degree robbery which is a felony.

With respect to the second-degree assault claim, in Washington state, '[a]ssault is an intentional touching or striking of another person that is harmful or offensive, regardless of whether it results in physical injury.'" State v. Jarvis, 246 P.3d 1280 (Wash. 2011) (quoting State v. Tyler, 155 P.3d 1002 (Wash. 2007)). An intent to commit any felony combined with an act that also constitutes an assault is a violation of Washington's second-degree assault provision.

In this case, the police report described the Petitioner's interaction with the robber based on her own statement to the police and the police officer's detection of the Petitioner's bodily injury. In addition, both Supplements B identified the crime as felonious assault and referenced the assault twice—first when the certifying official described how the Petitioner was attacked during the robbery, and again when the certifying official described the Petitioner's injury. As it reflects that the Applicant experienced intentional touching that was harmful or offensive, and the assailant's underlying intent was a felony offense, the second Supplement B specifies that law enforcement detected, investigated, or prosecuted assault in the second degree.

Second-degree assault is a class B felony. Wash. Rev. Code § 9A.36.021(2)(a). Therefore, assault in the second degree under Wash. Rev. Code § 9A.36.021(1)(e), a felony, is Washington State's statutory equivalent of felonious assault, an enumerated crime under section 101(a)(15)(U)(iii) of the Act. As a consequence, the Petitioner has demonstrated qualifying criminal activity and we withdraw the Director's finding to the contrary.

Because the Director determined that the Petitioner had not established qualifying criminal activity, they did not reach the merits of the Petitioner's eligibility under the remaining criteria, including whether the Petitioner established that she suffered substantial physical or mental abuse as a result of the crime. We therefore remand the matter to the Director to determine the Petitioner's eligibility under the other requirements for U-1 nonimmigrant status.

ORDER: The matter is remanded to the Director for further proceedings consistent with this opinion and for the entry of a new decision.