U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27673434

Date: SEP 8, 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).

The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the record did not establish that the Petitioner was the victim of 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of it. *Id.*

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).

USCIS has sole jurisdiction over U petitions, and petitioners bear the burden of proof 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). As a part of meeting this burden, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their helpfulness in the investigation or prosecution of the qualifying criminal activity.[1] Section 214(p)(1) of the Act; 8 U.S.C. § 1184(p)(1), 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider establishing that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of 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

The Petitioner filed the U petition in February 2017 with a Supplement B signed and certified by an assistant chief in the [redacted] police department (certifying official). The certifying official indicated that felonious assault was the qualifying crime, then cited to assault in the fourth degree under section 9A.36.041 of the Revised Code of Washington (Wash. Rev. Code. Ann.) as the statute that was investigated or prosecuted. When asked to describe the criminal activity, the certifying official noted that the suspect walked behind the counter and bumped the Petitioner several times, leading the Petitioner to believe he would be further assaulted. The suspect also stated, "I can kill you right now." The section asking the certifying official to describe known or documented injuries was left blank.

The [redacted] Police Department prepared a general offense hardcopy (offense report) indicating that the Petitioner was the victim of misdemeanor assault. The offense report characterized this altercation as a non-aggravated assault, and it noted that the weapon type was limited to hands, fists, or similar personal weapons. The incident description indicated that the Petitioner was accosted while managing a fast food restaurant. A dispute over a refund escalated when the assailant followed the Petitioner into the employee only area, bumped into him several times, and said "I can kill you right now." The offense report notes that the Petitioner was shaken by the incident and feared he would be assaulted further, and describes the assailant as a muscular male over six feet tall.

The Director issued a request for evidence (RFE), asking the Petitioner to provide a new Supplement B with an original signature from the certifying official. The RFE also noted that the crime listed on the Supplement B was not an enumerated offense as it cited to fourth degree assault, a misdemeanor. Finally, the Director requested evidence of substantial physical or mental abuse suffered as a result of the criminal activity. Separately from these eligibility requirements, the Director requested a full criminal history report for the Petitioner and a complete photocopy of his passport. In response, the Petitioner submitted a new Supplement B and argued that law enforcement had detected felony harassment, which in turn was sufficient to support a felonious assault charge under Washington law.

[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.

The Director denied the petition, finding that no qualifying crime had been detected. The remaining concerns outlined in the RFE were not addressed.

On appeal, the Petitioner asserts that, based on the factual circumstances of the offense, he was the victim of felony harassment under Wash. Rev. Code. Ann. § 9A.46.020. He further argues that, although gross misdemeanor assault was ultimately cited, law enforcement's detection of felony harassment means that he was necessarily a victim of assault in the second degree, one of Washington's statutory equivalents to the qualifying crime of felonious assault. Wash. Rev. Code. Ann. § 9A.36.021.[2]

B. Law Enforcement Detected the Qualifying Crime of Felonious Assault

As stated above, the Act requires that petitioners "ha[ve] been helpful, [are] being helpful, or [are] likely to be helpful" to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as documented on a certification from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. "Investigation or prosecution" of qualifying criminal activity "refers to 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).

The Petitioner has established that he was the victim of an assault under Washington law. Because the term is not defined by statute, Washington relies on a common law definition of assault. Courts in Washington have generally described the types of conduct constituting assault as follows:

> Washington recognizes three common law definitions of "assault": "(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm." Furthermore, under the common law "specific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault."

State v. Abuan, 257 P.3d 1, 10 (Wash. Ct. App. 2011). The offense report indicates that the aggressor bumped into the Petitioner multiple times during the confrontation, which satisfies the first definition of assault above. While assault is generally classified as a misdemeanor, Washington punishes assault as a felony when one of several aggravating factors is present. *See generally* Wash. Rev. Code Ann. §§ 9A.36.011, 9A.36.021, 9A.36.031 (2011).

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[2] Alternatively, the Petitioner argues that he was the victim of robbery under Wash. Rev. Code. Ann. § 9A.56.190 and contends that this felony would also elevate the underlying assault to a felonious assault. In addition, he argues that felony harassment as punished in Washington is substantially similar in nature and elements to Washington's felony-level assault statutes and that, therefore, any felony harassment should be considered a corresponding charge to felonious assault for purposes of U visa certification. Because the argument outlined above is dispositive, we reserve and will not address the remaining issues raised by the Petitioner. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

In this case, the Director was correct that the Supplement B and underlying offense report only included citations to misdemeanor assault under 9A.36.041 of the Wash. Rev. Code. Ann. However, the Petitioner has established that second degree assault, a felony, can be charged where a perpetrator acting with "intent to commit a felony, assaults another." Wash. Rev. Code. Ann. § 9A.36.021. The Petitioner argues that law enforcement detected the underlying crime of felony harassment during the commission of the assault, which was in turn sufficient to aggravate the conduct to a felonious assault.

Harassment in Washington is defined as a knowing threat to, *inter alia*, "cause bodily injury immediately or in the future to the person threatened." Wash. Rev. Code. Ann. § 9A.46.020. The perpetrator's words or conduct must place the victim in reasonable fear that the threat will be carried out. *Id.* Like assault, harassment is generally classified as a misdemeanor in Washington. However, where the threatening conduct includes a threat to kill, the crime is elevated to a felony. *Id.*

In this case, the offense report specifically notes that the suspect stated "I can kill you right now." As the Petitioner has argued, Washington courts have supported felony harassment convictions where the words or conduct of an individual places another in fear that a threat to kill will be carried out, and where the statement is a true threat not made in jest or idle talk. *See, e.g. State v. JM*, 28 P.3d 720, 723 (Wash. 2001) (collecting cases referencing true threat and supporting conviction for indirect threat to kill school principal); State v. France, 329 P.3d 864, 869 (Wash. 2014) (First Amendment concerns required state to prove a true threat was issued, but it was not required to prove an intent to immediately use force). While the offense report does not reflect an immediate attempt to act on this threat to kill the Petitioner, felony harassment convictions can stand where the threat is conditional or otherwise removed. State v. Hecht, 319 P.3d 836, 837 (Wash. Ct. App. 2014) (supporting conviction for felony harassment where defendant drove car toward victims, stopped close to victims, and threatened to kill victims if they were speaking about him). Therefore, the Petitioner's arguments regarding law enforcement detection of felonious assault can be supported even in the absence of an immediate intent to act on the threat.

Here, the offense report indicates that the perpetrator became verbally combative, followed the Petitioner into an employee-only area, repeatedly bumped into the Petitioner, then issued a threat to kill him. From the circumstances outlined in the offense report, there is no indication that the statement was made in jest or was idle talk. The offense report goes on to indicate that the Petitioner feared he would be further assaulted and was shaken by the incident. The Petitioner has established by a preponderance of the evidence that he received a death threat, and he was placed in reasonable fear that the threat would be carried out. Because the offense report contains sufficient support that law enforcement detected felony harassment during the commission of the assault, and law enforcement certified felonious assault in the Supplement B, the Petitioner can also establish by the preponderance of the evidence that second degree assault was detected during this incident.

The Director did not address the remaining elements of eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.[3] We will remand the case to the Director for further

[3] While not addressed in the Director's decision, we note that the Petitioner provided information in response to the RFE appearing to make him inadmissible, as he applied for admission without a waiver within ten years of accruing over one

consideration of the Petitioner's eligibility and the issuance of a new decision on the U petition and the waiver application.

III. CONCLUSION

On appeal, the Petitioner has overcome the Director's determination that the criminal activity was not a qualifying crime or substantially similar to a qualifying crime. The record does not otherwise establish the Petitioner's eligibility for U nonimmigrant classification. We will therefore remand the case to the Director for determination of the remaining eligibility criteria.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

year of unlawful presence.. If the Director ultimately finds the Petitioner eligible for U nonimmigrant status and also determines that the Petitioner is inadmissible under this ground or any other grounds, he will require a waiver via Form I-192, Application for Advance Permission to Enter as Nonimmigrant.