

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 qualifying criminal activity; that she did not meet her burden to prove she was helpful or likely to be helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity; and she did not meet her burden to show that she suffered substantial physical or mental abuse based on 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 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). 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 the 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).

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, have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity, and that the qualifying criminal activity occurred in the United States or its territories or possessions. Section 101(a)(15)(U)(i) of the Act.

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). A petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B must be signed by the certifying official within the six months immediately preceding the filing of the U petition. 8 C.F.R. § 214.14(c)(2)(i). Although a petitioner may submit any relevant, credible evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner filed her U petition in July 2017 with a Supplement B signed and certified in January 2017 by a sergeant in the [redacted] Police Department in [redacted] Colorado (certifying official) pertaining to an event that took place on August 27, 2005. In Part 3.1 of the Supplement B, the certifying official indicated the Petitioner was the victim of criminal activity involving or similar to "Other" and typed in "TRESPASS OF VEHICLE" underneath the box marked "Other." In Part 3.3 of the Supplement B, the certifying official listed Colorado Revised Statutes (CRS) 18-4-502 first degree criminal trespass as the specific statutory citation investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, the certifying official provided that:

[Petitioner's] son's car was damaged during trespass. Suspect pointed gun at son[.] [Petitioner] was reporting party and owner of vehicle."

When asked to describe any known injury to the victim, the certifying official stated, "quarter size hole on left side of steering column [of car]." In Part 4.1 of Supplement B, the certifying official noted that Petitioner possesses information concerning the criminal activity listed in Part 3. In response to additional questions pertaining to helpfulness of the victim in Supplement B Parts 4.2-4.5, the certifying official responded "unk" (for "unknown")-- including Part 4.2, which asks whether the victim has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity.

In addition to the Supplement B, the Petitioner submitted the police report which listed two victims, the Petitioner and her son, and two offenses, CRS 18-4-502 first degree criminal trespass and CRS 18-3-206 menacing. The police report investigation states the Petitioner called the police when she noticed her car being broken into:

[The Petitioner] then heard the car door open. [The Petitioner] stated she went and got her son C-C-¹. [The Petitioner] told C-C- that she thought someone was breaking into the car. She then stated that C-C- went outside and the suspect pulled a gun on him. [The police investigator] asked [the Petitioner] if she had seen the gun. [The Petitioner] told [the police investigator] that she didn't see the gun because C-C- told her to get back. [The police

¹ Initials are used to protect the identity of the individual.

investigator] asked [the Petitioner] if she knew who had pulled the gun on C-C-. [The Petitioner] stated that she didn't know his last name but said "his name is G-." [The police investigator] then went and spoke to C-C-.

The police report also includes Petitioner's son's, C-C-'s, account which states, in part:

C-C- told me that his mother had woke him up and told him that someone was possibly breaking into his car. C-C- stated that when he went outside and confronted the suspect, who he recognized as G-W-, pulled a black handgun and pointed it at him. [sic] [The police investigator] asked C-C- if G-[W-] said anything to him. C-C- told me that G-[W-] said, "Get back." C-C- then advised that G-[W-] began to run down (east bound) [redacted] and jump a fence about three or four houses to the east of his. I asked C-C- if he could describe the gun to me. C-C- stated all he could see was that it was black and thought it was a 9mm. [The police investigator] asked C-C- if anything was missing from inside the car. C-C- said "No." The only thing damaged was the steering column. C-C- also stated that he has to keep his car doors unlocked because the locking mechanisms are broken.

The Director reviewed the evidence submitted with the U petition and in response to a request for evidence, and we incorporate that list of evidence here. The Director determined that the Supplement B established that the Petitioner was the victim of CRS 18-4-502 first degree criminal trespass. However, the Director found the Petitioner did not establish that the detected and investigated crime, criminal trespass, is substantially similar to qualifying crimes found within regulation. The Director further found that the Petitioner did not establish that she suffered substantial physical or mental abuse based on qualifying criminal activity. Finally, the Director concluded that the Supplement B did not establish the Petitioner's helpfulness to law enforcement.

On appeal, the Petitioner urges that she was not only the victim of criminal trespass, but also the crime of menacing. On de novo review of the record, we find that the crime of menacing was detected and investigated only with respect to the Petitioner's son. In addition to the Supplement B and police report, the Petitioner also submitted a contemporaneous newspaper article from the [redacted] Press dated [redacted] 2005. All of these documents corroborate the Petitioner's son's statement to the police that he, not the Petitioner, was menaced with the gun. Petitioner's argument on appeal that she was the direct victim of menacing is inconsistent with the Supplement B, the police report and the newspaper article in the record.²

The Petitioner does not address whether criminal trespass under CRS 18-4-502 is the same or similar to any qualifying crimes, therefore that issue is waived. An issue not raised on appeal is waived. See, e.g., Matter of O-R-E-, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

² The Petitioner argues on appeal that even if she "did not meet her burden to establish that she was the direct victim of the menacing, she was still considered a victim under applicable regulations because her son was under age 21 at the time of the offense." See 8 C.F.R. 214.1 4(a)(14)(i). This regulation only applies where a direct victim "is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity." In the instant case, the minor, C-C- was neither incompetent nor incapacitated. His statement to the police was more detailed than the Petitioner's.

Based on a de novo review of the record, we adopt and affirm the Director's decision that the Petitioner did not establish she was the victim of qualifying criminal activity and that she did not meet her burden to demonstrate helpfulness to law enforcement, and therefore, the remaining requirements for U nonimmigrant status could not be met. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Maashio v. INS*, 45 F.3d 1235, 1238 (8th Cir. 1995) (appellate adjudicators may adopt and affirm the decision below). The Director's decision provided a thorough analysis regarding the Petitioner not meeting the helpfulness requirement for the U visa. As discussed above, we also agree that the Petitioner has not established that she was a victim of qualifying criminal activity. We need not reach, and therefore reserve two issues: (1) whether the Petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity; and, (2) whether the Petitioner was helpful or likely to be helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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).

III. CONCLUSION

Because the Petitioner has not established, by a preponderance of the evidence, her helpfulness to law enforcement and that she was the victim of qualifying criminal activity, the remaining requirements for U nonimmigrant status cannot be met, and she is therefore not eligible for U nonimmigrant status under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.