U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2090717

Date: AUG. 4, 2020

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), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews all questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015); *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2 (AAO Oct. 11, 2019). 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). 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).

Petitioners bear the burden of proof of demonstrating 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, 375 (AAO 2010). 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 the petitioners' helpfulness in the investigation or prosecution of the qualifying criminal activity

perpetrated against them.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). 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. The Petitioner Was Not the Victim of Qualifying Criminal Activity

The Petitioner has not established that he was the victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. As concluded by the Director, the Petitioner has not demonstrated that the certifying law enforcement agency detected, investigated, or prosecuted any qualifying criminal activity as perpetrated against him. To the contrary, the totality of the evidence indicates that the only offense detected, investigated, and prosecuted as perpetrated against the Petitioner was felony robbery by force under section 943.32(1)(a) of the Wisconsin Statutes Annotated (Wis. Stat. Ann.), which does not involve and is not similar to any qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act.

The Petitioner filed his U petition in September 2014 with a Supplement B signed and certified by the Director of Victim Witness Services at the [redacted] Wisconsin, County District Attorney's Office (certifying official). The certifying official cited to felony robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann. as the statute investigated or prosecuted as perpetrated against the Petitioner and explained that the perpetrator "approached the [Petitioner] from behind, wrapped an arm around [his] neck, and threw him to the ground[,]" ultimately "remov[ing his] wallet from his rear pocket by force." Similarly, the [redacted] Police Department incident report submitted with the Petitioner's U petition listed the incident as "Strong Arm Robbery 943.32" and provided that the perpetrator "grabbed [the Petitioner] around the neck[,] . . . threw [him] to the ground[,] . . . pulled on [his] rear pants pocket . . . and remov[ed his] wallet." A criminal complaint and criminal case summary further provided that the perpetrator was charged with, and convicted of, robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann. and sentenced to four years' incarceration and four years' extended supervision as a result of the offense.

On appeal, the Petitioner argues that he was the victim of the qualifying crimes of felonious assault and extortion based on the factual circumstances of the offense. Alternatively, he argues that felony robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann. is substantially similar to the qualifying crimes of felonious assault and extortion. The record does not support these claims.

1. Law Enforcement Did Not Detect, Investigate, or Prosecute the Qualifying Crimes of Felonious Assault or Extortion as Perpetrated Against the Petitioner

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

[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.

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. The requisite law enforcement certification must state, in pertinent part, that the petitioner "has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting." 8 C.F.R. § 214.14(c)(2)(i). "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).

We acknowledge that, on the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity "involving or similar to" the qualifying crime of "felonious assault." However, the Supplement B, when read as a whole and in conjunction with other relevant evidence in the record, does not establish, by a preponderance of the evidence, 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"). The Petitioner himself provides, in his brief on appeal, that "Wisconsin's criminal code does not contain crime[s] for 'assault' or 'felonious assault'" and submits a letter from the certifying official providing that "the offender in the matter was prosecuted under" section 943.32(1)(a) of the Wis. Stat. Ann. and that she "certified th[e crime] as a felonious assault" because, in part, "Wisconsin does not have a 'Felonious Assault' statute per se."

The Petitioner asserts that, in her letter, the certifying official additionally indicated that she certified the crime as a "felonious assault" based on the facts of the Petitioner's case: "[T]he perpetrator 'wrapped an arm around the [Petitioner]'s neck, and threw him on the ground. [The Petitioner] attempted to defend himself, but the [perpetrator] removed [his] wallet by force.'" He similarly contends that the facts of his case, as articulated in the Supplement B, incident report, criminal information, and criminal case summary, establish that the perpetrator "could have been prosecuted under Wisconsin's extortion statute" at section 943.30(1) of the Wis. Stat. Ann. and "it is acceptable if the perpetrator is prosecuted for . . . non-qualifying criminal activity." Contrary to the Petitioner's assertions, 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. Petitioners must establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity "in violation of Federal, State, or local criminal law." Sections 101(a)(15)(U)(i)(III), (iii) of the Act; 8 C.F.R. § 214.14(a)(2), (a)(9), (b)(3). 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.*

In this case, the certifying agency could not have detected, investigated, or prosecuted felonious assault as perpetrated against the Petitioner, as the offense does not exist within its jurisdiction. Moreover, the Supplement B, incident report, criminal information, and criminal case summary do not reference extortion under section 943.30(1) of the Wis. Stat. Ann. or otherwise indicate that extortion was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner.

Instead, the documents indicate that the only offense the certifying agency detected, investigated, and prosecuted as perpetrated against the Petitioner was felony robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann.

2. Felony Robbery by Force under the Wis. Stat. Ann. is Not Substantially Similar to the Qualifying Crimes of Felonious Assault or Extortion

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. 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).

a. Felonious Assault

The U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a "felonious assault" must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "felonious assault" when committed "in violation of Federal, State or local criminal law" as a qualifying criminal activity); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner).

At the time of the offense against the Petitioner, section 943.32(1)(a) of the Wis. Stat. Ann. defined felony robbery by force as:

> Whoever, with intent to steal, takes property from the person or presence of the owner by either of the following means is guilty of a Class C felony: . . . By using force against the person of the owner with intent thereby to overcome his or her physical resistance or physical power of resistance to the taking or carrying away of the property[.]

Wis. Stat. Ann. § 943.32(1)(a) (West 2000).

Because the Wisconsin criminal code and related case law do not provide a definition for, or punish, "felonious assault," "aggravated assault," or any other equivalent crime, the Director compared felony robbery by force under Wisconsin law to the Model Penal Code (MPC) definition of aggravated assault. The MPC defines and classifies both "simple assault" and "aggravated assault." MPC

§ 211.1. Simple assault is classified as a misdemeanor and aggravated assault is classified as a felony. *Id.* at §§ 211.1(1), (2). Individuals are guilty of aggravated assault if they:

> (a) attempt[] to cause serious bodily injury to another, or cause[] such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to value of human life; or . . .
>
> (b) attempt[] to cause or purposely or knowingly cause[] bodily injury to another with a deadly weapon.

MPC § 221.1(2) (Am. Law Inst. 2018).

The Director correctly concluded that the Petitioner had not met his burden of establishing that the nature and elements of felony robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann. were substantially similar to the qualifying crime of felonious assault as defined by the MPC. The Director emphasized that felony robbery by force in Wisconsin involves the taking of the personal property of another by force; it does not include, as an element, attempted or actual serious bodily injury or attempted or actual bodily injury with a deadly weapon. *Compare* Wis. Stat. Ann. § 943.32(1)(a) (punishing an individual who, "with intent to steal, takes property from the person or presence of the owner . . . [b]y using force"), *with* MPC § 211.1(2) (providing that an individual "is guilty of aggravated assault if he . . . attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly . . . or . . . attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon"); *see also Walton v. State*, 218 N.W.2d 309, 312-13 (Wis. Ct. App. 1974) (holding that "the degree of forced used" in committing robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann. "is immaterial" and that "[a]ny struggle to obtain the property . . . is ordinarily regarded as sufficient to satisfy the requirement").

The Petitioner does not dispute this conclusion, or these distinctions, on appeal, nor does he argue that any provision of Wisconsin law is the statutory equivalent to the qualifying crime of felonious assault. Instead, he urges that the "comparative analysis . . . should also [include consideration of] . . . traditional common law definitions" of aggravated assault. He asserts that the definitions of aggravated assault provided for in *West's Encyclopedia of American Law* and *Bouvier's Law Dictionary* are "undeniably substantially similar to the Wisconsin statute in the case at hand." Unlike the MPC, however, which was developed as a guideline to assist states in the revision, codification, and standardization of their criminal codes, *West's Encyclopedia of American Law* and *Bouvier's Law Dictionary* serve no comparable purpose and do not otherwise constitute "[qualifying] criminal activity . . . in violation of Federal, State, or local criminal law" as stated in section 101(a)(15)(U)(iii) the Act. *See* MPC § 1.02 (providing, in part, that the "general purposes" of the provisions are to "differentiate on reasonable grounds between serious and minor offenses" and to "define, coordinate, and harmonize the powers, duties and functions of the courts and of administrative officers and agencies responsible for dealing with offenders"); *see also Taylor v. United States*, 495 U.S. 575, 598 n.8 (1990) (directing, in the context of a federal sentence-enhancement statute, that a given offense's generic definition can be drawn from the "sense in which the term is . . . used in the criminal codes of most States" and that an offense's definition in the MPC can serve as an aid in doing so).

The Petitioner further asserts on appeal that "Wisconsin's '[r]obbery' statute is similarly structured [to] that of California" and that, in a prior non-precedent decision, the AAO concluded that "a nearly identical statute and fact pattern . . . [w]as a 'qualifying crime.'" However, as acknowledged by the Petitioner, the cited decision was not published as precedent and, accordingly, does not bind USCIS in future adjudications. *See* 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act"). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.[2]

Moreover, the certifying law enforcement agency must have responsibility for and legal jurisdiction over the investigation or prosecution of the qualifying criminal activity of which a petitioner is a victim. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; *see also* 8 C.F.R. §§ 214.14(a)(2), (b)(3), (c)(2)(i) (reiterating that U petitioners must demonstrate their helpfulness to a certifying agency in "the investigation or prosecution of the qualifying criminal activity upon which [their] petition is based" and clarifying that the term "certifying agency" is limited to "Federal, State, or local law enforcement agenc[ies], prosecutor[s], judge[s], or other authorit[ies] that ha[ve] responsibility for the investigation or prosecution of" the relevant offense). The crime investigated and prosecuted as perpetrated against the Petitioner took place in [redacted] Wisconsin, was investigated by the [redacted] Police Department, and was prosecuted by the [redacted] District Attorney's Office applying Wisconsin state law. The record does not indicate, and the Petitioner does not assert on appeal, that the relevant offense occurred in more than one jurisdiction or crossed state lines such that the [redacted] Police Department or [redacted] District Attorney's Office had concurrent jurisdiction over robbery under the California statute. Accordingly, and contrary to the Petitioner's assertion on appeal, the similarity of California's robbery statute to robbery with force under section 943.32(1)(a) of the Wis. Stat. Ann. is irrelevant to the determination of whether he was the victim of qualifying criminal activity and helpful to law enforcement authorities in the investigation or prosecution of it. The Petitioner has not established that robbery with force under section 943.32(1)(a) of the Wis. Stat. Ann. involves or is similar to the statutorily enumerated qualifying crime of felonious assault.

b. Extortion

The Petitioner further asserts on appeal that robbery with force under section 943.32(1)(a) of the Wis. Stat. Ann. has a "close relationship" to threats to injure or accuse of crime under section 943.30(1) of the Wis. Stat. Ann., Wisconsin's equivalent to the qualifying crime of extortion. Section 943.30(1) of the Wis. Stat. Ann. provides, in relevant part:

> Whoever, either verbally or by any written or printed communication, maliciously

[2] Indeed, the non-precedent decision to which the Petitioner refers is readily distinguishable from the case at hand. Importantly, although the Supplement B in the non-precedent decision cited to California's robbery provision, it indicated elsewhere that the petitioner reported being "assaulted and robbed," provided the statutory citation for assault, and noted that the assault was felonious. Based on this evidence, the AAO concluded that the petitioner had met her burden of establishing, by a preponderance of the evidence that law enforcement detected and investigated the qualifying crime of felonious assault as having been committed against her. Contrary to the assertions of the Petitioner on appeal, the decision did not consider whether California's robbery statute was substantially similar to the state's equivalent of the qualifying crime of felonious assault.

> threatens to accuse or accuses another of any crime or offense, or threatens or commits any injury to the person, property, business, profession, calling or trade, or the profits and income of any business, profession, calling or trade of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against the person's will or omit to do any lawful act, is guilty of a Class D felony.

Wis. Stat. Ann. § 943.30(1) (West 2019).

As the Director correctly concluded, the nature and elements of robbery by force and extortion under sections 943.32(1)(a) and 943.30(1) of the Wis. Stat. Ann., respectively, are not substantially similar as contemplated by 8 C.F.R. § 214.14(a)(9). As stated above, robbery by force involves the taking of personal property of another by force; it does not require the threat to accuse, or actual accusation, of a crime, or the threatened or actual injury to the person, property, business, profession, calling, or trade of another, or the profits of the same, as required for a conviction for extortion under section 943.30(1) of the Wis. Stat. Ann. Moreover, extortion under section 943.30(1) of the Wis. Stat. Ann. requires an intent to extort or compel action, whereas robbery with force under section 943.32(1)(a) of the Wis. Stat. Ann. requires only the intent to steal.

On appeal, the Petitioner cites the Wisconsin Court of Appeals decision in *State v. Dauer*, 497 N.W.2d 766 (Wis. Ct. App. 1993), asserting that the *Dauer* court "held that . . . the elements of [both robbery and extortion] were *extremely similar* and, at times, cannot be differentiated" (emphasis in original). The decision in *Dauer*, however, does not stand for the proposition asserted by the Petitioner. As a preliminary matter, the panel in *Dauer* compared extortion under section 943.30(1) of the Wis. Stat. Ann. to robbery by threat of force under section 943.32(1)(b) of the Wis. Stat. Ann.—a distinct subsection of the robbery statute than that at issue in this case. More importantly, the panel concluded that a conviction for extortion required "proof of facts in addition to those required for robbery." *Dauer*, 497 N.W.2d at 769 ("Extortion requires proof of a threat made by *verbal, written or printed communication*. In contrast, the robbery statute requires a threat but does not specify that the threat be verbal, written, or printed.") (emphasis in original). Consequently, while portions of the general robbery statute at section 943.32 of the Wis. Stat. Ann. may share some commonality with the state's equivalent to the qualifying crime of extortion, the regulations require more—specifically, substantial similarities in both the nature and the elements of the specific offenses in question. 8 C.F.R. § 214.14(a)(9); *see also* Black's Law Dictionary (11th ed. 2019) (defining "nature" as the "essence of something," while defining "elements of a crime" as the "constituent parts of a crime . . . that the prosecution must prove to sustain a conviction").

The Petitioner similarly highlights that, under federal criminal law, "Congress included both robbery and extortion in the same title, part, chapter, and section of the federal code, which strongly suggests that Congress categorize[d] robbery and extortion as similar offenses . . . ." *See* 18 U.S.C. § 1951(b)(1)-(2) (defining, under federal criminal law, "robbery" and "extortion"). However, the Petitioner does not explain the relevance of federal criminal laws in comparing the nature and elements of robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann. to the state's jurisdictional equivalent to the qualifying crime of extortion. The record also does not contain evidence that the certifying agency had jurisdiction over, and actually investigated or prosecuted, any federal offense as perpetrated against the Petitioner. The Petitioner has not met his burden of establishing that robbery

by force under section 943.32(1)(a) of the Wis. Stat. Ann. involves or is similar to felonious assault, extortion, or any other qualifying crime under section 101(a)(15)(U)(iii) of the Act.

B. The Remaining Eligibility Criteria for U-1 Classification

U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not met his burden of proof to establish, by a preponderance of the evidence, that he is the victim of qualifying criminal activity. The record shows that the Petitioner was the unfortunate victim of felony robbery by force, but this offense is not, does not involve, and is not similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act. The Petitioner is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.