U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8536053

Date: JUNE 12, 2020

Appeal of National Benefits Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity 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 National Benefits Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and the Petitioner filed an appeal from that decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possesses 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 26 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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions and the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 &N Dec. 369, 375 AAO 2010). As a part of meeting this burden, 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 petitioner must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(i)-(iii). 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.

II. ANALYSIS

The Director determined that the U petition was not approvable because the record did not establish the Petitioner was a victim of qualifying criminal activity. On appeal, the Petitioner asserts that she was the victim of qualifying criminal activity, as she was the victim of robbery. Specifically, the Petitioner claims that robbery in North Carolina is substantially similar to felonious assault, a qualifying crime for U purposes. We concur with the Director that the Petitioner has not established that she was the victim of qualifying criminal activity.

A. Qualifying Criminal Activity Was Not Detected, Investigated, or Prosecuted

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, 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 a petitioner. Section 101(a)(15)(U)(i)(III) of the Act; *see also* 8 C.F.R. § 214.14(b)(3) (requiring helpfulness to "to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based . . . .").

In this case, a police report indicates that law enforcement authorities detected, investigated, or prosecuted common law robbery under the North Carolina General Statutes. The Supplement B similarly indicates that the Petitioner was the victim of criminal activity involving robbery. The certifying official did not indicate that the Petitioner was the victim of any "criminal activity involving or similar to violations" of any of the enumerated criminal offenses as listed at Part 3 of the Supplement B. Specifically, neither the police report nor the Supplement B list the underlying criminal incident as a felonious assault or otherwise indicate that such crime was detected, investigated, or prosecuted as perpetrated against the Petitioner.

B. Common Law Robbery in North Carolina is Not a Qualifying Crime

The Director determined that common law robbery under the North Carolina General Statutes (NCGS) is not substantially similar to felonious assault. Since robbery is not specifically listed as qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act, the Petitioner must establish that its nature and

elements are substantially similar to a qualifying crime, such as felonious assault. The Act provides that "any similar activity" to the qualifying crimes may also be considered qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act. The regulations explicitly define the term "any similar activity" as "offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of qualifying criminal activities." 8 C.F.R. § 214.14(a)(9); *see also* Interim Rule, 72 Fed. Reg. at 53018 (stating that the definition of "any similar activity" was needed because, and "base[d] . . . on[,] the fact that the statutory list of criminal activity is not composed of specific statutory violations.").

The North Carolina Supreme Court defines common law robbery as "the felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence or putting him in fear." *State v. Harris,* 360 N.C. 145, 622 S.E.2d 615, 620 (2005); *see also State v. Stewart*, 255 N.C. 571, 572, 122 S.E.2d 355, 356 (1961).

The Petitioner contends that North Carolina's common law robbery contains elements similar to the federal common law definition of felonious assault. However, the Petitioner cites to cases, including *Guarro v. United States*, 237 F.2d 578 (D.C. Cir. 1956) and *Ladner v. United States*, 358 U.S. 169 (1958), which refer to the common law definition of simple assault, not felonious assault. And, simple assault does not constitute a qualifying crime for U purposes. As such, we need not determine whether North Carolina common law robbery is substantially similar to the federal common law definition of simple assault cited by the Petitioner.

Further, though not raised by the Petitioner on appeal, North Carolina's common law robbery is also not substantially similar to North Carolina's common law felonious assault. Like robbery, the crime of assault in North Carolina is also governed by common law rules; there is no statutory definition of assault. However, the North Carolina Supreme Court has defined "the common law offense of assault as 'an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.'" *State v. Roberts*, 155 S.E.2d 303, 305 (N.C. 1967). And, the NCGS provides for different punishments for various types of assault offenses. The specific elements that elevate a simple assault to a felony include aggravating factors such as castration; maiming; the use of corrosive acid or alkali; the use of a deadly weapon either with the intent to kill or resulting in serious injury; assaults that inflict serious bodily injury; assaults against a particular class of person; discharging certain barreled weapons or firearm; or adulterated or misbranded food, drugs, or cosmetics. N.C. Gen. Stat. Ann. §§ 14-28 – 14-32.4, 14-34.1 – 14-34.2, 14-34.4 – 14-34.7, 14-34.9 – 14-34.10.

Comparison of North Carolina robbery and felonious assault definitions demonstrate that these crimes are not substantially similar in their nature and elements. The offense of robbery unlike assault is, in part, a property crime requiring the taking of money or goods. And, although robbery does involve either violence or placing an individual in fear, it does not include the aggravating factors required for felonious assault, as stated above. As the Petitioner has not established that robbery is substantially similar to felonious assault, or any other qualifying crime, she has not demonstrated that she was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

On appeal, the Petitioner also asserts that she has satisfied additional eligibility requirements for a U visa. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Petitioner's helpfulness to law enforcement and whether she suffered from substantial physical or mental abuse due to her victimization. *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 an applicant is otherwise ineligible).

III. CONCLUSION

The record shows that the Petitioner was the victim of robbery. However, she has not demonstrated that she was a victim of qualifying criminal activity or criminal activity substantially similar to a qualifying crime. Accordingly, the Petitioner has not established her eligibility for U nonimmigrant classification.

ORDER: The appeal is dismissed.