U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-C-G-

DATE: NOV. 9, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918 PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition because the Petitioner did not establish that she was the victim of qualifying criminal activity and that she suffered resultant substantial physical or mental abuse. On appeal, the Petitioner submits a brief and copies of evidence previously submitted.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification to:

> (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
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> (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
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> (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

Blackmail and extortion are listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act, which also provides that a qualifying criminal activity involves the specifically listed crimes "or any similar activity in violation of Federal, State, or local criminal law. . . ."

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

> (a) *Definitions*. As used in this section, the term:
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> . . .
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> (9) Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. 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.
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> . . .
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> (b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :
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> (1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level . . . ;

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

> (1) Petitioning Procedures for Section 101(a)(15)(U) Visas
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> The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).
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> . . .
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> (4) Credible Evidence Considered
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> In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

> The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in 2005 without inspection, admission or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on June 11, 2014. On September 11, 2014, the Director issued a request for evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime and requesting evidence concerning the physical or mental harm suffered by the Petitioner as a result of the criminal activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918, which the Petitioner has timely appealed. On appeal, the Petitioner claims that she suffered

substantial physical or mental abuse as a result of being a victim of a qualifying criminal activity under the regulation.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the Director's decision to deny the Petitioner's Form I-918.

A. Qualifying Criminal Activity

The Petitioner submitted a Form I-918 Supplement B with her original petition bearing an illegible signature, stating that the certifying agency was the Illinois State Attorney's Office, dated February 21, 2014. In response to the Director's RFE, the Petitioner submitted a second Form I-918 Supplement B signed by , chief of the sex assault unit of the dated October 24, 2014. Both Form I-918 Supplement Bs stated in Part 3.1 that the Petitioner was a victim of felonious assault. In Part 3.3 of both Form I-918 Supplement Bs, the certifying official referred to 720 Illinois Compiled Statute (ILCS) 5/12-3-A-1 (simple battery). At Part 3.5 of the second Form I-918 Supplement B, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, stated that the Petitioner "was slapped, punched, scratched, and kicked about the face and body" while the previously submitted Form I-918 Supplement B only referred to the police report. The Illinois Police Department report indicates that the offense investigated was simple battery under 720 ILCS 5/12-3-a-1 and that the Petitioner sustained kicks to her stomach and back.

The crime of battery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the crime investigated, simple battery, must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under the ILCS, "[a] person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS § 5/12-3(a) (West 2013). Aggravated battery is defined under 720 ILCS § 5/12-3.05, which contains the elements of simple battery but involves great bodily harm or permanent disability or disfigurement. Illinois law provides that an assault occurs when a person "without lawful authority, . . . knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 ILCS § 5/12-1. Aggravated assault is defined as an assault that occurs using a weapon, or against a specially protected class of person, such as a corrections officer, a police officer, or a State employee acting within the scope of his or her employ. 720 ILCS § 5/12-2.

The elements of battery under 720 ILCS § 5/12-3 do not include the mitigating, aggravating factors found in 720 ILCS § 5/12-2 to make battery substantially similar to felonious assault. The statute investigated in this case involves committing harm or otherwise making contact of an insulting or provoking nature against a person. Felonious assault, however, involves conduct that places another in reasonable fear of harm from a deadly weapon. The certifying official did not indicate on either Form I-918 Supplement B that the Petitioner was a victim of felonious assault or that the certifying agency investigated a felonious assault against the Petitioner arising from the certified incident. There is also no mention on the Form I-918 Supplement B or in the police report of any aggravating factor to indicate that a felonious assault occurred. The Petitioner has not shown that any crime other than simple battery was detected, investigated, or prosecuted by the certifying agency.

On appeal, the Petitioner states that she was the victim of a criminal activity that meets the requirements for aggravated battery and aggravated assault. She further notes that regardless of charges brought, if the certifying authority detects another crime, that detection is sufficient to establish that she was the victim of qualifying criminal activity. Specifically, the Petitioner states that since she was attacked in a public place, then 720 ILCS 5/12-3.05 (aggravated battery) applies to her claim, and because she was placed "in reasonable apprehension of receiving a battery," then 720 ILCS 5/12-1 (aggravated assault) applies to her claim. In addition, the Petitioner states that it is within the prosecutor's discretion whether to charge simple or aggravated battery, so the prosecutorial decision should not affect her eligibility for U nonimmigrant status. The standard for inclusion as qualifying criminal activity is that the crime investigated or prosecuted is "substantially similar" to one of the enumerated crimes. The proper inquiry is a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes, not the facts underlying the criminal activity that took place or what crimes may have been charged. *See* 8 C.F.R. § 214.14(a)(9). As stated above, the only crime that the Illinois Police Department indicated that it investigated was simple battery. The Case Incident Report does not indicate that the Police Department detected a crime other than the one investigated. Although the Illinois State Attorney's Office checked the box on Part 3.1 stating that the Petitioner was the victim of felonious assault, there was no indication elsewhere on the Form I-918 Supplement B that aggravated assault was detected, investigated, or prosecuted and Part 3.3 indicates that only simple battery was detected, investigated, or prosecuted.

Here, the evidence in the record and the Petitioner's contentions fail to establish that the criminal offense of which the Petitioner was a victim, simple battery, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault. The Petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. Substantial Physical or Mental Abuse

As noted by the Petitioner on appeal, because the Petitioner has not established that she was a victim of qualifying criminal activity, it is irrelevant whether or not she suffered substantial physical or mental abuse. Because the Petitioner failed to establish the predicating issue that she was the victim of qualifying criminal activity, she has also failed to demonstrate that he suffered substantial

physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

C. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

D. Possesses Information and Helpfulness to Law Enforcement

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

E. Jurisdiction

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not established that she was the victim of a qualifying crime. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of E-C-G-*, ID# 14598 (AAO Nov. 9, 2015)