U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-C-C-

DATE: SEPT. 14, 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* section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 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.

I. APPLICABLE LAW

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

> (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 --
>
> (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);
>
> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
>
> (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
>
> (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;
>
> . . . .

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The term "any similar activity," as used in section 101(a)(15)(U)(iii) of the Act, "refers to 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).

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

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(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;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . . ;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . . ; and

(4) 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.

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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who indicates that she last entered the United States without inspection, admission, or parole in April 2000. 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 October 1, 2012. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The Director subsequently issued a request for evidence (RFE) for, among other documents, evidence that the Petitioner was the victim of a qualifying criminal activity. The Petitioner timely responded with additional evidence which the Director found insufficient to establish eligibility and denied the Forms I-918 and I-192. The Petitioner timely appealed the denial of the Form I-918.

We conduct appellate review on a *de novo* basis. Based on the evidence in the record and the brief on appeal, the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918.

III. CERTIFIED CRIMINAL ACTIVITY

The Form I-918 Supplement B was signed by Acting [redacted] of the [redacted] Police Department (certifying official). At Part 3.1, the certifying official identified the criminal activity of which the Petitioner was a victim as "Felonious Assault," "Battery," and "Drunk Driving." However, at Part 3.3, the certifying official referred only to California Vehicle Code (Cal. Veh. Code) § 23152(a) (driving under the influence) as the criminal activity investigated or prosecuted.

IV. DRIVING UNDER THE INFLUENCE UNDER CALIFORNIA LAW IS NOT A QUALIFYING CRIMINAL ACTIVITY

The certified crime of driving under the influence is not specifically listed as a qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. However, the statute also provides for any "similar activity" to the listed qualifying 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). The inquiry, therefore, is not fact-based, but rather entails a comparison of the nature and elements of the statutes in question. To establish that she was the victim of the qualifying criminal activity of felonious assault, the Petitioner must demonstrate that the nature and elements of the certified crime, Cal. Veh. Code § 23152(a), driving under the influence under California law, is substantially similar to a felonious assault.

A felonious assault is committed under California law when a perpetrator uses caustic chemicals or flammable substances (Cal. Penal Code§ 244), a deadly weapon or force likely to produce bodily injury (Cal. Penal Code § 245), or when some other aggravating factor is involved in the assault (Cal. Penal Code§ 244.5- 245.5). In contrast, under California law, driving under the influence is committed when a person drives a vehicle while under the influence of an alcoholic beverage. Cal. Veh. Code § 23152(a). Driving under the influence does not require elements substantially similar to a felonious assault under California law such as force likely to produce bodily injury, or use of a deadly weapon. *See* Cal. Penal Code §§ 244, 245, or 244.5-245.5. Therefore, the Petitioner has not established that the nature and elements of driving under the influence are substantially similar to felonious assault or any other qualifying criminal activity.

On appeal, the Petitioner asserts that the Director did not consider that the "perpetrator's conduct is also related to California's felonious assault equivalent statutes . . . PC 245(a)(1), VC 23153(a), and even PC 242." The Petitioner, however, refers to penal codes under California law that were not certified on the Form I-918 Supplement B. The only crime certified as having been investigated or prosecuted was driving under the influence under Cal. Veh. Code § 23152(a), which the Petitioner has not established is substantially similar to felonious assault or any other qualifying crime under California law. Further, the police report does not indicate that the certifying official or any other law enforcement entity investigated any criminal activity other than driving under the influence under Cal. Veh. Code § 23152(a). Although the Petitioner asserts that the perpetrator's underlying conduct should be considered, we must analyze the nature and elements of the certified crime rather than the facts underlying the incident. *See* 8 C.F.R. § 214.14(a)(9). The Petitioner has not established that the nature and elements of the crime of driving under the influence are substantially similar to felonious assault or any qualifying crime at section 101(a)(15)(U)(iii) of the Act. The Petitioner has therefore, not established that she is the victim of a qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

V. THE REMAINING STATUTORY REQUIREMENTS

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she also cannot establish that she meets the remaining statutory requirements at section 101(a)(15)(U)(i)(II) – (IV) of the Act.

VI. CONCLUSION

The Petitioner has not established by a preponderance of evidence that she was the victim of a qualifying criminal activity, and, therefore, cannot meet the remaining statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act.

As in all visa petition proceedings, the Petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of V-C-C-*, ID#13254 (AAO Sept. 14, 2015)