U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C-I-

DATE: DEC. 14, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concluded the Petitioner did not establish that she has been a victim of qualifying criminal activity. Accordingly, the Director also determined the Petitioner did not establish that she meets any of the remaining eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. We dismissed the Petitioner's subsequent appeal.

The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits a brief and a statement. The Petitioner continues to claim that she was a victim of qualifying criminal activity.

Upon review, we will deny the motion.

I. LAW

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

As discussed in our prior decision, incorporated here by reference, under the regulation at 8 C.F.R. § 214.14(a)(9), a victim of qualifying criminal activity must demonstrate the "nature and elements of the offense[] are substantially similar to the statutorily enumerated list of criminal activities."

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

On the Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), although part 3.1 referenced the criminal activity as felonious assault and strong arm robbery, at part 3.3 the only statutory citation listed as being investigated or prosecuted was "Wis. Stat. 943.32(1)(A) Robbery-Strong Arm." Similarly, the remaining descriptions of the investigated crime on the Supplement B and in the police report indicated only robbery.

In our prior decision we therefore determined the certified crime was robbery, which is not a qualifying crime. As the Petitioner did not specify which Wisconsin statute should be compared to the certified crime to determine that it was substantially similar to a felonious assault, we analyzed the crime as compared to section 940.19 of the Wisconsin Statute Annotated (aggravated battery). We concluded that Wisconsin felony battery offenses require at a minimum the intent to cause bodily harm while the robbery offense does not. We found the two offenses further differed in that the battery provision lacks an element of taking property. Thus, we found that although the two offenses could be classified as felonies they lacked a common scienter and differed on the substantive elements.

On motion, the Petitioner states that she was the victim of a misdemeanor battery and a felony robbery, which *when combined* are a qualifying criminal act. However, this approach is not supported by statute or regulations. Rather we must look to the nature and elements of the certified offense and compare those elements to one of the qualifying crimes created by Congress and determine if the investigated offense is substantially similar. Here, the Petitioner has not established that the crime of robbery under the Wisconsin code is a qualifying crime or substantially similar to felonious assault, a qualifying crime. Although the Petitioner has submitted additional evidence in support of the motion to reopen, the new facts do not overcome our prior determination. In addition, she has not cited binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy or was incorrect based on the relevant evidence in the record at the time of the decision.

III. CONCLUSION

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of S-C-I-*, ID# 165189 (AAO Dec. 14, 2016)