U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-G-M-

DATE: FEB. 8, 2016

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 The Director's decision will be withdrawn and the matter remanded for entry of a new decision.

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 --
>
> (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[.]
>
> . . . .

Felonious assault is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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:

> (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 . . . .;
>
> (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;
>
> (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.

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. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in March 2002, without admission, inspection, 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, and a Form I-192, Application for Advance Permission to Enter

as Nonimmigrant, on April 5, 2013. On December 1, 2014, the Director issued a request for evidence (RFE) establishing that the criminal activity set forth on the Form I-918 Supplement B was a qualifying criminal activity or substantially similar to one. The Petitioner responded to the RFE, but the Director found the Petitioner's response insufficient to establish eligibility. Accordingly, the Director denied the Form I-918, concluding that the criminal offense certified on the Form I-918 Supplement B was misdemeanor battery, which was not a qualifying crime or substantially similar to one, and consequently, the Petitioner had not established that she was the victim of qualifying criminal activity and was also unable to meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The Petitioner timely filed the instant appeal and submits a brief and copies of previously proffered evidence.

A. Certified Criminal Activity

The Form I-918 Supplement B that the Petitioner submitted was signed by [redacted] California, Sheriff's Department (certifying official), on October 9, 2012. The certifying official marked the box for felonious assault at Part 3.1 as the criminal activity of which the Petitioner was a victim, but cited to section 242 of the California Penal Code, relating to a misdemeanor battery offense, as the criminal activity that was investigated or prosecuted in Part 3.3. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the perpetrator, who the Petitioner had dated once before, began to suddenly hit the Petitioner about the head and face with his fists or a hard object while the two were kissing. In addressing known or document injuries to the Petitioner at Part 3.6, the certifying official noted that the Petitioner had severe bruising and swelling about the right side of her face and mouth and was bleeding form her mouth and lips. Finally, at Part 4.5, which asks the certifying official to describe the helpfulness of the victim, he stated that "[a]lthough the report was written as a misdemeanor battery[,] the investigating detective . . . believed that Victim [redacted] injuries were sufficient to warrant a felony assault filing" and would have presented a felony filing to the District Attorney's Office had the suspect been identified or located. In a separate letter, also dated October 9, 2012, the certifying official stated that the Petitioner "was the victim of a felonious assault and was instrumental in the investigation."

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has overcome the Director's grounds for denial. We withdraw the Director's decision to deny the petition on the stated grounds. However, the petition is not approvable and we therefore remand for further proceedings consistent with our decision here and for issuance of a new decision.

A. Qualifying Criminal Activity

Upon our *de novo* review of the record, the Petitioner has demonstrated that she is a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, namely, felonious assault. On appeal, the Petitioner asserts that the Director erred in finding that the Form I-918 Supplement B only certified the Petitioner as a victim of misdemeanor battery, which is not a qualifying crime, and

urges us look to the injuries she sustained and the underlying facts to conclude that the perpetrator could have been charged with felony assault. However, the relevant inquiry is not a fact-based one into whether conduct or facts identified by the certifying agency in its investigation may or may not establish that a qualifying criminal activity occurred. Rather, our inquiry focuses on whether the Form I-918 Supplement B and the record as a whole, establishes that the certifying agency detected, investigated or prosecuted a qualifying crime. Here, we conclude that the record demonstrates that the certifying agency investigated or prosecuted the offense of felonious assault against the Petitioner. Although the certifying official cited the statute for misdemeanor battery, Cal. Penal Code § 242, in Part 3.3 of the Form I-918 Supplement B, he specified in Part 3.1 that the Petitioner was a victim of felonious assault. He further clarified in Part 4.5 that the investigating detective believed the Petitioner's injuries warranted a felony assault filing but did not present a felony filing for prosecution solely because the suspect was not identified or located, indicating that a felony assault was in fact detected[1] by the certifying agency. Lastly, the certifying official issued a letter contemporaneously with the Form I-918 Supplement B, stating that the Petitioner was the victim of felonious assault. Nothing in the record contradicts the certifying official's statements and certification of the offense detected and investigated as felonious assault. Consequently, the record as a whole sufficiently demonstrates that the Petitioner was a victim of the qualifying criminal activity of felonious assault, and we withdraw the Director's determination to the contrary.

Notwithstanding our withdrawal of the determination below, the petition is not approvable because the Director also found that the Petitioner had not established any of the eligibility criteria at section 101(a)(15)(U)(i) of the Act. As that determination was based solely on the Director's finding that the Petitioner had not established that she was the victim of qualifying criminal activity, which we have now withdrawn, we will remand the matter to the Director to reconsider the Petitioner's eligibility under section 101(a)(15)(U)(i) of the Act.

B. Admissibility

Additionally, section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. 8 C.F.R. § 212.17(b)(3).

[1] The term "investigation or prosecution," as used in section 101(a)(15)(U)(iii) of the Act, also refers to the "detection" of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

In this case, the Director denied the Petitioner's Form I-192 solely on the basis of the denial of the Form I-918. The Director indicated that the Petitioner was inadmissible under section 212(a)(6)(A)(i) of the Act (present in the United States without admission or parole).[2] However, the Director did not determine whether USCIS would have favorably exercised its discretion and approved the waiver, but rather, denied her waiver request based solely on the denial of her Form I-918. As the grounds for denial of the Petitioner's Form I-918 have been overcome, we will return the matter to the Director for reconsideration of the Form I-192 as well.

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). Here that burden has been met as to the Petitioner's demonstration that she was the victim of a qualifying crime. The petition is not approvable, however, because the Petitioner must still show she has met the remaining eligibility criteria, and she remains inadmissible to the United States and her waiver application was denied. As such, the matter will be remanded to the Director for further action and issuance of a new decision.

ORDER: The decision of the Director, Vermont Service Center is withdrawn. The matter is remanded to the Director, Vermont Service Center for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of A-G-M-*, ID# 15417 (AAO Feb. 8, 2016)

[2] The Petitioner also appears inadmissible pursuant to section 212(a)(7)(A)(i) (not in possession of valid unexpired passport) of the Act, as a copy of the Petitioner's passport in the record reflects that it is expired.