U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-L-G-R-

DATE: JUNE 17, 2016

APPEAL OF VERMONT SERVICE CENTER 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. The Director concluded the Petitioner did not establish that he has been a victim of qualifying criminal activity or criminal activity substantially similar to crimes enumerated in the Act. Accordingly, the Director also determined the Petitioner did not establish that he meets the remaining eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner generally claims that, as a matter of fact and law, he is the victim of qualifying criminal activity, which has impacted a preexisting condition, and merits a favorable exercise of discretion.

Upon *de novo* review, we will dismiss the appeal.

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 . . .
>
> . . . .
>
> (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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

According to the regulation at 8 C.F.R. § 214.14(a)(9), "[t]he 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." The regulation at 8 C.F.R. § 214.14(a)(14) states, in pertinent part, "*Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity."

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 in our *de novo* review; 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

A. Certified Criminal Activity

(certifying official), in Illinois, signed the Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), listing the criminal activity of which the Petitioner was a victim at part 3.1 as involving or being similar to "Other: battery." In part 3.3, the certifying official referred to chapter 720, act 5, section 12-3 of the Illinois Compiled Statutes as the criminal activity that was investigated or prosecuted. At part 3.5,

which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, the certifying official stated "[b]attery [at] the workplace."

The crime of "Battery" is not specifically listed as qualifying criminal activity 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 certified offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. Accordingly, the inquiry is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

On appeal, the Petitioner generally discusses the legislative history of U nonimmigrant classification along with burdens and standards of proof, including the "any credible evidence" standard. The Petitioner has provided a description of the events of which he was a victim, the injuries he sustained, and the effect the events had on his ability to remain employed at his workplace and to obtain employment elsewhere. Although we do not minimize the impact of this event on the Petitioner, as previously discussed, our inquiry does not rely on an analysis of the factual details underlying the criminal activity, but rather, a comparison of the nature and elements of the crime that was investigated and certified with the qualifying crime.

B. Illinois Battery Is Not Substantially Similar to Felonious Assault

The only crime certified at part 3.3 of the Supplement B was a provision from the Illinois Compiled Statutes, which at the time of the investigation, stated in relevant part:

> (a) A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.
>
> (b) Sentence. Battery is a Class A misdemeanor.

720 Ill. Comp. Stat. Ann. act 5, § 12-3 (West 2011).

The Petitioner asserts that although neither the United States Code nor the Illinois Criminal Code contains a definition for "felonious assault," a qualifying crime, the term is a generic one that "melds together elements that would normally be involved with either 'assault' or with 'battery[,]'" and thereby, the offense of battery in Illinois is substantially similar to felonious assault. While the Petitioner may be correct that neither code contains an offense specifically labelled "felonious assault," for an assault to have occurred in Illinois, the perpetrator, without lawful authority, must have engaged in conduct "which places another in reasonable apprehension of receiving a battery." Ill. Comp. Stat. Ann. § 12-1. And, for an assault to be classified as a felony, there must be an aggravating factor (such as the use of a deadly weapon, firearm, or laser device), or it must be

committed against a specific class of persons (such as peace officers, security officers, fire fighters, emergency medical personnel, corrections officers and employees, law enforcement officers and employees, air traffic control personnel, or emergency management personnel). Ill. Comp. Stat. Ann. § 12-2.

The statute investigated in this case involves a physical touch or bodily injury, and does not require the use of a deadly weapon, firearm, or laser device, or an assault against a protected class as a necessary component. Felonious assault, however, involves an apprehension, with a present ability to commit a touch or an injury upon another with an aggravating factor such as those previously listed. Accordingly, the Petitioner has not established that the nature and elements of the certified crime are substantially similar to felonious assault.

C. Employment & Labor Laws

On appeal, the Petitioner generally asserts "qualifying criminal activity may occur during the commission of non-qualifying criminal activity[,]" and law enforcement officials may be constrained in how they charge and prosecute alleged crimes. He also asserts as "a member of a vulnerable immigrant population" consisting of laborers and workers, he has been subjected to labor abuse that is substantially similar to other qualifying crimes, including: extortion, foreign labor contracting, involuntary servitude, peonage, slave trade, and trafficking, along with attempt to commit any of the aforementioned offenses. Contrary to the Petitioner's assertion, "foreign labor contracting" is not listed in the Act as qualifying criminal activity. *See* section 101(a)(15)(U)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(U)(iii). Moreover, as stated previously, our analysis requires a comparison of the nature and elements of the crime that was investigated and certified with the qualifying crime. While part 3.5 of the Supplement B stated "[b]attery [at] workplace," the underlying crime investigated was for a battery under section 12-3 of the Illinois code, and not for violations of employment or labor laws. The record does not establish that the certifying agency investigated or prosecuted an attempted or actual extortion, involuntary servitude, peonage, slave trade, and trafficking of the Petitioner. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was actually investigated or prosecuted. The record does not sufficiently demonstrate that any crime other than battery was investigated or prosecuted.

In addition, the Petitioner asserts he was subjected to "workplace and labor abuse" in violation of several state and federal statutes, including not only battery, but also: intimidation, hate crime, minimum wage and overtime requirements, and workplace violence prevention. None of these crimes are listed in the Act as qualifying criminal activity. *See* section 101(a)(15)(U)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(U)(iii). Again, although we recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime, the record does not sufficiently demonstrate that any crime other than battery was investigated or prosecuted.

III. CONCLUSION

The Petitioner has not established that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act, and he thereby cannot demonstrate that he meets any of the remaining eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act.

In these proceedings, the Petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. 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 met this burden. He 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 J-L-G-R-*, ID# 16722 (AAO June 17, 2016)