



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF D-M-

DATE: NOV. 16, 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.

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)[.]

.....

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

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[.]

.....

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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States in October 2010 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 February 20, 2013. The Director issued a request for evidence (RFE) of, among other things, that the Petitioner was the victim of and suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility for U nonimmigrant status. The Director denied the Form I-918 U petition and the accompanying Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner claims that he suffered substantial physical or mental abuse as a result of being a victim of battery which is substantially similar to felonious assault, a qualifying crime.

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner's brief on appeal, does not establish that the Petitioner meets the definition of a victim of qualifying criminal activity.

(b)(6)

Matter of D-M-

A. Battery under Florida State Law is not Substantially Similar to a Qualifying Crime or Criminal Activity

The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED] Detective/CIB, City of [REDACTED] Police Department (certifying official), on December 31, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as “battery” in the space indicating “other.” In Part 3.3, the certifying official referred to section 784.03 of the Florida Statutes Annotated (FSA) which is captioned “Battery; felony battery.” At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the Petitioner was shoved to the pavement. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that the “victim sustained minor scrapes on his elbows and knees which did not require medical treatment.” The certifying official further stated in Part 4 that the Petitioner was cooperative throughout the investigative process.

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.” *See* 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the Florida battery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *Id.* The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under section 784.03 of the FSA, a person commits battery when he or she “[a]ctually and intentionally touches or strikes another person against the will of the other or . . . [i]ntentionally causes bodily harm to another person.” A person guilty of battery is guilty of a misdemeanor of the first degree. *See* Fl. Stat. Ann. § 784.03 (West 2015). A person who has a prior conviction for “battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree.” *Id.* Under the Model Penal Code (MPC), “[a] person is guilty of aggravated assault if he: (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.” Model Penal Code § 211.1(2) (West 2014).

On appeal, the Petitioner asserts that the definition of aggravated assault under the MPC encompasses the elements of battery under Florida law. However, aggravated assault under the MPC requires, as an element of the offense, the presence of an additional aggravating factor, such as the infliction of a greater level of harm (serious bodily injury) to the victim or the use of a deadly weapon. Accordingly, in comparing the statutory elements of battery and aggravated assault, we find that the offenses are not substantially similar. *See* 8 C.F.R. § 214.14(a)(9). Here, the record shows that the Petitioner was a victim of battery. The certifying official did not indicate that any other crimes was investigated or prosecuted. The police report states that the offense committed was misdemeanor battery-simple. As stated above, the statutory elements of battery and aggravated

assault under Florida law are not substantially similar, and the Petitioner does not provide the requisite statutory analysis to demonstrate the claimed similarities between the offenses. The Petitioner has, therefore, failed to establish that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

IV. THE REMAINING STATUTORY REQUIREMENTS

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

V. CONCLUSION

The Petitioner has not demonstrated that the offense of battery under FSA section 748.03 is a qualifying crime or substantially similar to qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. As the Petitioner has not established that the offense of which he was the victim of is qualifying criminal activity, he is prevented from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. Consequently, he is statutorily ineligible for U nonimmigrant status.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of D-M-*, ID# 14927 (AAO Nov. 16, 2015)