



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

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

MATTER OF J-P-

DATE: NOV. 18, 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. 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.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, based on a finding that the Petitioner was not a victim of qualifying criminal activity. As a result, the Director also found that the Petitioner could not establish that he suffered substantial mental or physical abuse as a result of qualifying criminal activity, possessed information about qualifying criminal activity, or was helpful in the investigation or prosecution. On appeal, the Petitioner submits a brief.

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 labor contracting (as defined at 18 U.S.C. § 1351); 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), 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.” (Emphasis added).

The burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-918 on July 8, 2013. The Director issued a notice of intent to deny (NOID) because the evidence did not establish that the crime of which the Petitioner was a victim, misdemeanor battery, was a qualifying crime or substantially similar to a qualifying crime. The Petitioner responded to the NOID with a brief in which he contended that he was the victim of a violent assault because the perpetrators knocked him to the ground and punched him in the face. The Petitioner indicated that he suffered physical injuries, for which he received medical treatment, and that he also sought psychological counseling following the incident. The Director found the evidence insufficient to establish that the Petitioner was the victim of a qualifying crime, and therefore also found that the Petitioner could not establish eligibility under the remaining elements of section 101(a)(15)(U)(i) of the Act. Accordingly, the Director denied the petition. The Petitioner filed a timely appeal.

(b)(6)

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III. CERTIFIED CRIMINAL ACTIVITY

The Petitioner submitted a Form I-918 Supplement B, signed on June 7, 2013, by [REDACTED] Supervising Attorney, [REDACTED] District Attorney's Office, [REDACTED] California (certifying official). The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of "Other: Misdemeanor Battery." At Part 3.3, the certifying official cited Cal. Penal Code § 242 as the relevant criminal statute for the criminal activity that was investigated or prosecuted. At Part 3.5 of the Form I-918 Supplement B, the certifying official stated that the Petitioner was involved in an argument, and that two people "knocked [the Petitioner to] the ground where they then punched him in the face and body." At Part 3.6, the certifying official reported that the Petitioner sustained injuries to his eye and nose and was treated at a hospital.

IV. VICTIM OF QUALIFYING CRIMINAL ACTIVITY

The preponderance of the evidence does not establish that the Petitioner was the victim of a qualifying crime or criminal activity.

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." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of battery 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.

Cal. Penal Code § 242 provides, "A battery is any willful and unlawful use of force or violence upon the person of another." The Petitioner argues that battery under Cal. Penal Code § 242 can "rise to the level of a felonious assault." He cites the assault statute, Cal. Penal Code § 240, which provides, "An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." The nature and elements of battery under Cal. Penal Code § 242 are not substantially similar to assault under Cal. Penal Code § 240. Battery involves the use of force or violence upon another person, while assault requires an attempt to commit a violent injury on another person. Although battery may be achieved by differing levels of force or violence, violence and injury are not required elements of the crime as they are in the assault statute. Because battery does not require an attempt to commit violent injury, its nature and elements are not substantially similar to assault.

According to the Petitioner, he was the victim of a violent assault because he was knocked to the ground, punched in the face and body, and suffered physical and psychological harm as a result. He asserts that "this case cannot be adjudicated based only on the statutory definition of a battery because such offense is not limited to the use of force of any degree," and the Petitioner was the victim of a violent crime. However, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crime that was

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investigated with a qualifying crime. See 8 C.F.R. § 214.14(a)(9). Furthermore, the certifying official indicated on the Form I-918 Supplement B that the Petitioner was the victim of battery, not felonious assault, and stated that battery was the crime investigated or prosecuted.

Here, the record does not demonstrate that the nature and elements of the crime of battery investigated in this case, Cal. Penal Code § 242, are substantially similar to felonious assault under Cal. Penal Code § 240 or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the Petitioner has not demonstrated that he is the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act. As a result, he cannot demonstrate that he suffered substantial physical or mental abuse as a result of the crimes or that he meets any of the remaining eligibility criteria at 101(a)(15)(U)(i)(II)-(IV) of the Act.

V. CONCLUSION

As the Petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has not shown that he can satisfy any of the criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. Therefore, the Petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act.

As in all visa petition proceedings, the Petitioner bears the burden of proving 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). Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of J-P-*, ID# 15004 (AAO Nov. 18, 2015)