



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

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

MATTER OF D-M-

DATE: JUNE 30, 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 petition and we dismissed a subsequent appeal. In our prior decision, incorporated here by reference, we concluded that the Petitioner had not established that he was a victim of qualifying criminal activity and consequently, also did demonstrate the remaining eligibility criteria under section 101(a)(15)(U)(i)(II)-(IV) of the Act.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief. The Petitioner claims that he is a victim of battery, which he asserts is substantially similar to the qualifying crime of felonious assault, as defined under the Model Penal Code.

Upon review, we will deny the motion to reconsider.

I. APPLICABLE LAW

A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). 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 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).

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, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our 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

Upon a full review of the record, the Petitioner has not overcome the grounds for denial.

In our prior decision on appeal, we held that the record established that the Petitioner was a victim of misdemeanor battery under section 784.03(1) of the Florida Statutes, which is not one of the qualifying criminal activities enumerated at section 101(a)(15)(U)(iii) and is not substantially similar to one of the qualifying crimes. Specifically, we found that the battery offense of which the Petitioner was a victim was not substantially similar to felonious assault, as defined under Model Penal Code section 211.1(2), as the Petitioner had asserted. As the Petitioner had not demonstrated that he was a victim of qualifying criminal activity, we determined that he also could not establish the remaining statutory eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i)(II)-(IV) of the Act.

On motion, the Petitioner does not identify any legal or factual error in our earlier decision and instead reasserts his prior argument on appeal, namely that the battery offense investigated in his case is substantially similar to aggravated assault under the Model Penal Code because both offenses involve “causing bodily injury.” In support of his assertion, the Petitioner points to the underlying facts set forth in the police report indicating that he had sustained bodily injuries as a result of the criminal activity.

Section 101(a)(15)(U)(iii) of the Act encompasses “any similar activity” to the enumerated qualifying crimes, which the regulation defines 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). Consequently, the nature and elements of the crime investigated or prosecuted here must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. The inquiry, therefore, is not fact-based, but rather entails a comparison of the nature and elements of the statutes in question. On motion, the Petitioner has not overcome our prior determination that misdemeanor battery under Florida law is not substantially similar to the qualifying criminal activity of felonious assault as defined under the Model Penal Code section 211.1(2). Misdemeanor battery under section 784.03(1) of the Florida Statutes occurs when a person “[a]ctually or intentionally touches or strikes another person against the will of the other or . . . [i]ntentionally causes bodily harm to another person. In contrast, aggravated assault under Model Penal Code section 211.1(2) occurs if a person: (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.

A comparison of the statutory elements of the two offenses demonstrates that misdemeanor battery in Florida and aggravated assault under the Model Penal Code are not substantially similar. A conviction for misdemeanor battery in Florida requires only a touching, which may or may not result in bodily injury to another person, without any aggravating factor. In contrast, aggravated assault under the Model Penal Code requires the further presence of an aggravating factor, such as the infliction of or an attempt to cause *serious* bodily injury to the victim or the use of deadly weapon during the commission of the assault, neither of which is required for the Florida misdemeanor battery offense. Contrary to the Petitioner’s assertion, the mere fact that both offenses “involve”

causing bodily injury is insufficient to establish they are substantially similar. Accordingly, in comparing the statutory elements of misdemeanor battery investigated in the Petitioner's case and aggravated assault under the Model Penal Code, the two offenses are not substantially similar. The Petitioner, therefore, has not established that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

On motion, the Petitioner has not overcome the ground for denial, as he has not demonstrated that misdemeanor battery under section 784.03(1) of the Florida Statutes is a qualifying criminal activity or substantially similar to one, which is a prerequisite of each statutory element for U nonimmigrant classification. The Petitioner therefore has not established that he is a victim of qualifying criminal activity and consequently, has not demonstrated the remaining eligibility criteria at section 101(a)(15)(U)(i) of the Act. Accordingly, the Petitioner is ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of D-M-*, ID# 16948 (AAO June 30, 2016)