



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

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

MATTER OF F-C-C-

DATE: SEPT. 12, 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 petition. The Director concluded that the Petitioner had not established that he was a victim of qualifying criminal activity and consequently had also not demonstrated the statutory criteria for U nonimmigrant classification under subsections 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, an affidavit, and copies of previously-submitted material. The Petitioner claims that he was a victim of criminal activity that is substantially similar to one of the qualifying crimes and has therefore satisfied the statutory criteria for U classification.

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

(b)(6)

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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: . . . felonious assault; . . . 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 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 *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

The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (U petition) and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), claiming to be the victim of a felonious assault. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director’s grounds for denial.

A. Victim of Qualifying Criminal Activity

1. Criminal Activity Certified as Being Detected,¹ Investigated, or Prosecuted

The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), signed on October 10, 2013, by [REDACTED] District Attorney, [REDACTED]

¹ The term “investigation or prosecution,” as used in section 101(a)(15)(U)(i) of the Act, also includes the “detection” of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

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██████████ District Attorney's Office, ██████████ Georgia (certifying official). At part 3.3 of the Supplement B, the certifying official cited to sections 16-7-1, 16-5-23.1, and 16-5-20 of the Georgia Code, corresponding to the offenses of burglary, battery, and simple assault, respectively, as the criminal activities that were investigated or prosecuted. At part 3.1, the certifying official asserted that the criminal activity committed against the Petitioner involved or is similar to the crime of "Other: Battery." At Part 3.5, which asks for a description of the criminal activity being investigated, and at Part 3.6, which asks for a description of any known or documented injuries to the victim, the form indicates "See Police Report." The record of proceedings contains a police Incident/Investigation Report from an incident, dated ██████████ 2002, which identifies the crime incident as "burglary, residential" and describes the perpetrator's method of entry and lists items stolen. The record of proceedings includes a Police Incident Report from an incident dated ██████████ 2002, that references a warrant issued for the charges of burglary under offense code 16-07-01, simple assault under offense code 16-05-20, and battery under offense code 16-05-23.1. The accompanying narrative describes the Petitioner's report of his pursuit and capture of an offender who had burglarized his home, and notes that the offender attempted unsuccessfully to hit the Petitioner with a thrown rock but bit the Petitioner on the forearm leaving a bite mark. The narrative states that the offender escaped police custody and warrants were obtained for burglary, simple assault, battery, and obstruction. The record of proceedings does not establish that the certifying agency or another law enforcement agency actually detected, investigated, or prosecuted the qualifying offense of felonious assault as having been committed against the Petitioner. Accordingly, our *de novo* review of the record establishes that the Petitioner was the victim of burglary, battery, and simple assault.

2. The Certified Crimes Are Not Qualifying Crimes and Are Not Substantially Similar to a Qualifying Crime

The offenses certified as having been committed against the Petitioner are not specifically listed as qualifying crimes 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 offenses investigated must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Georgia law defines the offense of burglary, in part, as occurring when a person, without authority and with the intent to commit a felony or theft therein, enters or remains within the dwelling house of another or enters or remains within any other building, or any room or any part thereof. Ga. Code Ann. § 16-7-1 (West 2002).²

² The Petitioner does not contend that burglary is qualifying criminal activity or substantially similar to the statutorily enumerated list of criminal activities.

Georgia law defines misdemeanor battery as when a person intentionally causes substantial physical harm or visible bodily harm to another and further states that the term “visible bodily harm” means bodily harm capable of being perceived by a person other than the victim. Ga. Code Ann. §16-5-23.1 (West 2002).

Georgia law defines simple assault as an attempt to commit a violent injury to the person of another or places another in reasonable apprehension of immediately receiving a violent injury. Ga. Code Ann. § 16-5-20 (West 2002). Simple assault rises to an aggravated assault when, in part, the assault is coupled with a deadly weapon or with any object, device or instrument, which when used offensively, is likely to or actually does result in serious bodily injury, or when the assault is accomplished with an intent to murder, rape, or rob. Ga. Code Ann. § 16-5-21(a) (West 2002).

On appeal, the Petitioner contends that battery and simple assault are substantially similar to felonious assault. He asserts that federal regulations do not define felonious assault, and that there is no definition of felonious assault under Georgia law; however, as noted above, aggravated assault is defined under Georgia law at section 16-5-21 of the Georgia Code.³

Regarding battery, the Petitioner maintains that battery constitutes a crime of violence as defined by section 16 of Title 18 of the U.S. Code in that it involves the use, attempted use, or threatened use of physical force against another.⁴ The Petitioner states that Georgia courts have held that to sustain a conviction under the battery statute, actual physical contact is required. *See Hammonds v State*, 263 Ga. App. 5 (GA. Ct. App. 2003); *McKinney v. State*, 218 Ga. App. 633 (Ga. Ct. App. 1995). The Petitioner further contends that in *Hernandez v. U.S. Att’y General*, 513 F.3d 1336 (11th Cir. 2008), the Eleventh Circuit Court of Appeals held that a simple battery conviction under the second prong of Georgia’s battery statute at section 16-5-23(a) requires intentionally causing physical harm through physical contact and therefore constitutes a crime of violence. However, our analysis here is to determine whether the nature and elements of battery under Georgia law are substantially similar to felonious assault; even if battery is an aggravated felony and thus a crime of violence under section 101(a)(43) of the Act, such a determination is not relevant to our inquiry.

The Petitioner argues that the nature and elements of battery are similar to felonious assault under Georgia law because both statutes require the infliction of physical force and physical harm. However, a battery occurs under Georgia law when “substantial physical harm” or “visible bodily harm” is inflicted on another person. The relevant battery statute does not require the harm to result in “serious bodily injury,” as required for an aggravated assault. More importantly, the Petitioner

³ The Petitioner also references the Federal Sentencing Guidelines for his assertion that felonious assault is akin to aggravated assault. As we have determined that Georgia defines aggravated assault, we will not further address the Sentencing Guidelines, which are non-binding rules that set out a uniform sentencing policy for defendants convicted in the United States federal court system.

⁴ The term “crime of violence” means: (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. *See* section 16 of Title 18 of the U.S. Code.

has not demonstrated that “substantial physical harm” and “serious bodily injury” are substantially similar.

Regarding simple assault, the Petitioner asserts that under *Skaggs v. State*, 596 S.E. 2d 159 (Ga. 2004), body parts can become “instruments” as that term is used in the definition of aggravated assault. The Petitioner argues that this makes the simple assault of which he was victim similar to aggravated assault.

A simple assault occurs under Georgia law upon an attempted “violent injury” or another act that places a person in reasonable apprehension of receiving such an injury, whereas aggravated assault results in “serious bodily injury.” The Petitioner has not demonstrated that “violent injury” and “serious bodily injury” are substantially similar. Although the court determined in *Skaggs* that body parts can be “instruments,” the deadly weapon, object, device or instrument used must be likely to or actually result in “serious bodily injury” for an aggravated assault to occur, not just a “violent injury.” The fact that both battery and simple assault involve a degree of harm does not make them substantially similar to aggravated assault, which specifies the degree of harm as “serious bodily injury. Accordingly, the Petitioner has not established that the nature and elements of the crimes investigated and of which he was a victim (battery and simple assault) are substantially similar to felonious assault.

The Petitioner has not established that the certifying agency detected, investigated, or prosecuted a qualifying crime committed against him, and the evidence establishes the he was the victim of crimes not substantially similar to felonious assault. The Petitioner, therefore, has not established that he was the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. Substantial Physical or Mental Abuse

In his declarations the Petitioner asserts that he experienced substantial physical and mental abuse as a result of having been a victim of burglary, battery, and assault. As the Petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he necessarily has also not demonstrated that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

C. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that he possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

D. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he necessarily has also not established that he has been, is being or is likely to be helpful to a federal,

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state, or local law enforcement official, prosecutor, federal or state judge or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

E. Jurisdiction of Qualifying Criminal Activity

As the Petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also not established that qualifying criminal activity occurred within the jurisdiction of the United States, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated that he was a victim of one of the qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. He, therefore, necessarily cannot satisfy the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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

ORDER: The appeal is dismissed.

Cite as *Matter of F-C-C-*, ID# 10638 (AAO Sept. 12, 2016)