



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

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

MATTER OF G-C-G-

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 she was a victim of qualifying criminal activity and, therefore, could not meet 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, a copy of a U.S. Citizenship and Immigration Services (USCIS) Fact Sheet, and California Criminal Jury Instructions (CALCRIM) regarding assault and battery crimes. The Petitioner claims that the record demonstrates that she was an indirect victim of battery, which is substantially similar to the qualifying crime of felonious assault, and that she has suffered substantial physical and mental abuse as a result.

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);

(b)(6)

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- (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: . . . 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), as an indirect victim, claiming that her [redacted] year-old daughter was the victim of a felonious assault.<sup>1</sup> 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,<sup>2</sup> Investigated, or Prosecuted

<sup>1</sup> *See* 8 C.F.R. § 214.14(a)(14)(i), which provides that a parent may be considered an indirect victim when the direct victim is incompetent or incapacitated.

<sup>2</sup> The term “investigation or prosecution,” as used in section 101(a)(15)(U)(i) of the Act, also includes the “detection” of

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The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), dated November 6, 2013, by [REDACTED] Investigations, [REDACTED] California, Police Department (certifying official). At part 3.3 of the Supplement B, the certifying official cited to section 242 of the California Penal Code (battery) as the relevant criminal statute for the criminal activity that was investigated or prosecuted. At part 3.1 of the Supplement B, the certifying official asserted that the offense in part 3.3 involved or was similar to the qualifying crime of felonious assault.

On appeal, the Petitioner contends that the record establishes that she was a victim of felonious assault, a qualifying crime. As defined in 8 C.F.R. § 214.14(a)(14), a “victim” for purposes of U classification is a petitioner who has suffered harm as a result of the commission of qualifying criminal activity. Here, although the certifying official indicated that the Petitioner was a victim of “criminal activity involving or similar to” felonious assault in part 3.1 of the Supplement B, he did not cite to the corresponding California statute for that offense in part 3.3 as the criminal offense that was actually investigated or prosecuted. Instead, as noted, the certifying official listed only the statute for battery. The certifying official’s completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Rather, it is part 3.3 which establishes the crime or crimes that the certifying agency detected, investigated, or prosecuted that resulted in a petitioner’s victimization. The purpose of part 3.1 is only to identify the general category of criminal activity to which the offense(s) in part 3.3 may relate. *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations).

Similarly, in describing the criminal activity investigated at part 3.5 of the Supplement B, the certifying official stated that the Petitioner’s child was the victim of a battery on school grounds. The record of proceedings also includes a police report that lists the “Incident Type” as “Assault-Simple,” but references only the offense of battery under section 242 of the California Penal Code.<sup>3</sup> The record is insufficient to 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 battery.

## 2. The Certified Crime Is Not A Qualifying Crime and Is Not Substantially Similar to Qualifying Crime

On appeal, the Petitioner contends that her daughter was the victim of felonious assault because her daughter sustained bodily injury. The Petitioner refers to section 243(f)(4) of the California Penal

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a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

<sup>3</sup> Although we give a properly executed Supplement B significant weight, it is not the only evidence that we may consider when determining whether qualifying criminal activity occurred during the commission of, or is substantially similar to, the certified offense(s) in part 3.3. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

Code, which defines serious bodily injury in the context of a battery, and argues that the nature and elements of the offense committed against her daughter are substantially similar to that of aggravated battery under section 243(d) of the California Penal Code, which is similar to felonious assault at section 245 of the California Penal Code. The Petitioner further refers to CALCRIM jury instructions for her assertion that because battery is included in the elements of an assault and her daughter suffered serious bodily injury, the facts of the offense show that the elements of aggravated battery and the elements of a felonious assault were present.

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.” Thus, the nature and elements of the offense(s) 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). Although the Petitioner compares the facts of the offense against her daughter to the definitions of aggravated battery and felonious assault under California law, the inquiry is not fact-based as the Petitioner claims, but rather entails comparing the nature and elements of the statutes in question.

The Supplement B in part 3.3 reflects that section 242 of the California Penal Code (battery) was investigated. Under California law at the time of the incident, battery was defined as: “[A]ny willful and unlawful use of force or violence upon the person of another.” Cal. Penal Code § 242 (West 2013). California law defines “assault” as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2013).

California recognizes a distinction among battery and assault offenses based on the presence of aggravating factors. Battery that involves the infliction of serious bodily injury carries a greater penalty than battery without such factor. *Compare* Cal. Penal Code § 243(a) *with* § 243(d). For an assault in California to be classified as a felony, there must be an aggravating factor involved. *Compare* Cal. Penal Code § 240 *with* Cal. Penal Code § 245(a)(4). Here, the certifying agency identified battery under section 242 of the California Penal Code as the investigated offense and does not further distinguish it under section 243 of the California Penal Code. Accordingly, the Petitioner has not demonstrated that the offense that resulted in her daughter’s victimization was detected, investigated, or prosecuted by the certifying agency as aggravated battery under section 243(d) of the California Penal Code.<sup>4</sup> The relevant statutory comparison is, therefore, battery as defined under section 242 of the California Penal Code to felony assault under section 245(a)(4).<sup>5</sup> These two statutes are not substantially similar because felony assault involves “force likely to produce great bodily injury” whereas “any willful and unlawful use of force” constitutes a battery.

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<sup>4</sup> The police report attached to the Supplement B also identifies the incident as “Assault – Simple,” which shows the absence of an aggravating factor during the commission of the offense.

<sup>5</sup> In 2013, section 245(a)(4) of the California Penal Code provided: “Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished . . . .” Cal. Penal Code § 245(a)(4).

and there is no specification to the level of force inflicted. *Compare* Cal. Penal Code § 242 with § 245(a)(4). This statutory analysis does not demonstrate that the nature and elements of the criminal activity investigated, battery, are substantially similar to the qualifying crime of felonious assault. As such, the Petitioner has not demonstrated that she is the indirect victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

**B. Substantial Physical or Mental Abuse**

On appeal, the Petitioner asserts that the record demonstrates the substantial physical and mental abuse that she and her daughter suffered as a result of the crime. However, as the Petitioner did not establish that her daughter was the victim of a qualifying crime or criminal activity, she necessarily has also not demonstrated that she suffered substantial physical or mental abuse as a result of having been an indirect victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. We, therefore, do not engage in further review of the Director's determination on this issue.

**III. CONCLUSION**

The Petitioner has not demonstrated that she was a victim of qualifying criminal activity. She, 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 G-C-G-*, ID# 10495 (AAO Sept. 12, 2016)