



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

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

In Re: 22567805

Date: NOV. 07, 2022

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Nebraska Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the record did not establish that the Petitioner was the victim of a qualifying criminal activity, or a crime substantially similar to a qualifying criminal activity. The Director also found that the Petitioner did not establish that he suffered substantial physical or mental abuse. We dismissed the Petitioner's subsequent appeal, finding that the Petitioner did not establish that a qualifying crime was detected, investigated, or prosecuted, and declined to reach whether offenses cited by the Petitioner were substantially similar to a qualifying criminal activity. The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

**I. LAW**

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As stated in our decision on appeal, which we incorporate herein, to establish eligibility for U nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term "investigation or prosecution" of a qualifying criminal activity includes "the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." 8 C.F.R. § 214.14(a)(5).

"Qualifying criminal activity" is "that involving one or more of" the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or "any similar activity in violation of Federal, State, or local criminal

law.” Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The term ““any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities” at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9). A “felonious assault” must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. See section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying “felonious assault” when committed “in violation of Federal, State or local criminal law” as a qualifying criminal activity).

It is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners’ helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over Forms I-918. 8 C.F.R. § 214.14(c)(1). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

The Petitioner filed his Form I-918 in February 2016 with a Supplement B signed and certified by a sergeant (certifying official) from the [ ] Police Department in [ ] Florida, regarding an incident occurring in 2005. The certifying official checked the box for “Other” in Part 3.1, adding that the Petitioner was the victim of criminal activity involving or similar to “Battery.” The certifying official identified section 784.03 of the Florida Statutes Annotated (FSA) as the specific statute for the criminal activity investigated or prosecuted and deferred to an attached police report when asked to describe the criminal activity investigated or prosecuted. The certifying official similarly deferred to the police report when asked to describe any known or documented injury to the Petitioner. The police report provided that a man at a restaurant shoved the Petitioner but did not cause the Petitioner to fall or lose balance and produced no visible injuries. The report added that a restaurant manager asked the man to leave and escorted him out of the restaurant. The report indicates that the Petitioner was too busy to talk to the police following the incident, but that he later provided a statement to the police. In that statement, the Petitioner said that the man punched him in the back and when he turned around the man threw more punches at him. The Petitioner submitted a declaration dated January 2016 wherein he said that he was busy working when a man punched him in the back but that he had to contain himself because he was attending to tables and did not want any trouble.

In response to a request for evidence issued in September 2020, the Petitioner provided a report from a nonprofit community organization [ ] showing that he participated in several therapy sessions in 2019 and 2020. The [ ] claimed that a man with a knife tried to stab the Petitioner causing him to wrestle the man to the floor until police came to take the man away. The [ ] characterized the incident as an attempted murder.

The Director denied the Petitioner’s Form I-918 concluding that the Petitioner was the victim of battery pursuant to section 784.03 of the FSA, which does not appear in the list of qualifying criminal

activities found in section 101(a)(14)(U) of the Act, and therefore was not a qualifying criminal activity, and that the same statute was not substantially similar to section 784.045 of the FSA, titled “Aggravated Battery.” The Director also determined that the Petitioner had not suffered substantial physical or mental abuse because he was not a victim of a qualifying criminal activity.

On appeal, the Petitioner claimed that the Director’s decision was erroneous and that he was a victim of a felony battery under sections 784.03 and 784.041 of the FSA, and aggravated battery under section 784.045 of the FSA, rather than misdemeanor battery under section 784.03 of the FSA that was certified in the Supplement B, and that these crimes are substantially similar to felonious assault. The Petitioner did not address the Director’s finding that he had not suffered substantial physical or mental abuse. In support of his appeal, the Petitioner submitted a supplemental statement in which he stated that the man who attacked him followed him into the bathroom, threatened to kill him, and punched him in the back. He stated the man tried to tackle him, push him down, and continued to beat him.

In our decision on appeal, we determined that the Petitioner did not establish he was the victim of a qualifying criminal activity because law enforcement had not detected, investigated, or prosecuted the qualifying crime of felonious assault or any other qualifying crime. Specifically, we found that law enforcement detected and investigated misdemeanor battery pursuant to section 784.03 of the FSA, rather than any felonious assault or battery. Because the non-felony provision of section 784.03 was the criminal activity detected, investigated, or prosecuted, we declined to reach the issue of whether the felony provisions of section 784.03 and 784.041 of the FSA, or aggravated battery under section 784.045 of the FSA were substantially similar to a felonious assault in Florida.

In making these determinations we reviewed the underlying facts contained in the Supplement B, police records, and supplemental evidence submitted by the Petitioner to determine which criminal activity was detected, investigated, or prosecuted, and concluded that the non-felony provision of section 784.03 of the FSA was the criminal activity detected, investigated, or prosecuted. We also acknowledged that while criminal activity may occur during the commission of non-qualifying activity, the record did not establish that law enforcement detected, investigated, or prosecuted felony battery under sections 784.03 or 784.041 of the FSA, or the aggravated felony under section 784.045 of the FSA. We also noted that the Petitioner did not argue the non-felony provision of section 784.03 of the FSA was substantially similar to the qualifying crime of felonious assault.

On motion, the Petitioner concedes that he was certified as a victim of “Other: Battery” as opposed to felonious assault, and that section 784.03 of the FSA was the specific statute for the criminal activity investigated or prosecuted. The Petitioner, however, repeats his argument that he was a victim of felonious assault regardless of whether the crime charged was a misdemeanor, and claims that if we had considered the underlying facts, we would have determined that the crime committed constituted a felonious assault. The Petitioner restates that the criminal activity investigated constitutes felonious assault under both sections 784.03 and 784.045 of the FSA.<sup>1</sup> In making these

---

<sup>1</sup> Although the Petitioner indicates section 784.05 of the FSA is titled “Aggravated Battery,” that section actually corresponds to “Culpable Negligence.” Section 784.045 of the FSA corresponds to “Aggravated Battery,” and is the section that we analyzed on appeal. Thus, we assume the Petitioner’s citation to section 784.05 is an error and that section 784.045 is the section the Petitioner is referring to on motion. We also note that when citing to section 784.03 of the FSA, the Petitioner provides the language “great bodily harm, permanent disability, or permanent disfigurement” that is actually found in section 784.041, not 784.03, and thus we will consider section 784.041 of the FSA as well.

arguments, the Petitioner argues that he was physically and violently assaulted, forcing him to fight for his life, and that the perpetrator continued to attack him until managers called the police at which time the perpetrator fled. He claims that, as a result, he suffered great bodily harm and permanent disability including a severe back injury that limits his ability to move his torso, and the development of post-traumatic stress disorder (PTSD). He argues that declining to seek immediate medical attention or the fact that physical or psychological harm does not immediately manifest itself does not negate the harm suffered as a result of the crime. The Petitioner concludes that given these facts, the record clearly shows that the crime satisfies the elements of felonious assault.

We again acknowledge the Petitioner's claims of having developed a physical disability and symptoms of PTSD, and again, we do not seek to minimize the claims related to the Petitioner's health. However, we reemphasize that what hypothetically could have been investigated or charged as a qualifying crime is not sufficient to establish eligibility absent evidence indicating, by a preponderance of the evidence, that law enforcement authorities in fact detected, investigated, or prosecuted the qualifying criminal activity as perpetrated against the Petitioner. Sections 101(a)(15)(U)(i)(III) and 241(p)(1) of the Act. The record reflects that at the time the incident was reported, law enforcement investigated the report of a man that shoved the Petitioner with his forearms causing no visible injuries and described the incident as a battery under section 783.03 of the FSA. Witness statements obtained from the time of the incident indicate that the man knocked the Petitioner into a table he was serving, and that the man pushed the Petitioner and tried to kick him. The Petitioner's contemporaneous statement from the incident reflects that the man punched him in the back. The police report and contemporaneous statements do not reflect any great bodily harm, permanent disability, permanent disfigurement, or use of a deadly weapon was detected or investigated. In fact, the police report states "NOT APPLICABLE" where it could list any weapon or tools associated with the incident, and evidence reflects that the Petitioner immediately returned to his work tending tables at a restaurant. The same evidence also does not reflect that the perpetrator had a prior conviction for battery, aggravated battery, or felony battery that would be required to classify section 784.03 of the FSA as a felony. While subsequent statements from the Petitioner and the [REDACTED] indicate the Petitioner was attacked with a knife and that the attack caused a severe back injury, as we noted on appeal this information does not indicate that law enforcement in fact detected, investigated, or prosecuted criminal activity based on these asserted facts. Instead, the record reflects that misdemeanor battery under section 784.03 of the FSA was the criminal activity detected, investigated, or prosecuted, and that the Petitioner therefore was not the victim of a qualifying criminal activity.

Alternatively, the Petitioner argues that we erred in finding that the crime of felony battery and aggravated battery under Florida law were not substantially similar to felonious assault. However, our decision on appeal reflects that we declined to reach the issue of whether the felony battery and aggravated battery offenses under the FSA are substantially similar to a felonious assault in Florida. Because we again conclude that misdemeanor battery, rather than any felonious assault or battery, was detected or investigated, we again do not need to reach whether the offenses cited by the Petitioner were substantially similar to a felonious assault in Florida.

While criminal activity may occur during the commission of non-qualifying activity, review of the record of evidence, including the Supplement B, police records, and supplemental evidence submitted by the Petitioner, establishes that law enforcement detected, investigated, or prosecuted misdemeanor battery, rather than felony battery under sections 784.03 or 784.041 of the FSA, aggravated battery

under section 784.045 of the FSA, or any other qualifying crime. As such, the Petitioner has not established that our prior decision was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

**ORDER:** The motion to reconsider is dismissed.