



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

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

In Re: 25115025

Date: APR. 4, 2023

Appeal of Nebraska Service Center Decision

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 of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish he was the victim of qualifying criminal activity and therefore the remaining requirements for U nonimmigrant status could not be met. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for U-1 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, have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity, and that the qualifying criminal activity occurred in the United States or its territories or possessions. Section 101(a)(15)(U)(i) of the Act.

A “victim of qualifying criminal activity” is defined as an individual who has “suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). “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 the 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).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). A petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B must be signed by the certifying official within the six months immediately preceding the filing of the U petition. 8 C.F.R. § 214.14(c)(2)(i). Although a petitioner may submit any relevant, credible evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner filed his U petition in April 2016 with a Supplement B signed and certified in March 2016 by a sergeant in the [redacted] Police Department in [redacted] Illinois (certifying official). In Part 3.1 of the Supplement B, the certifying official checked a box indicating the Petitioner was the victim of criminal activity involving or similar to "Other" and typed in "Battery" underneath this box. In Part 3.3 of the Supplement B, the certifying official listed act 5, section 12-3(a)(1) of chapter 720 of the Illinois Compiled Statutes Annotated (Ill. Comp. Stat. Ann.) as the specific statutory citation investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, the certifying official provided that the Petitioner was "the victim of a battery committed by several offenders who punched him about the head and body." When asked to describe any known injury to the Petitioner, the certifying official stated "unknown." In addition, the Petitioner provided multiple [redacted] Police Department incident reports which described the incident as "Battery" and listed 720 Ill. Comp. Stat. Ann. 5/12-3, the statutory provision for misdemeanor battery. The incident reports reflect that the Petitioner was punched "about the head and body with closed fists" by four individuals. There is no indication the Petitioner sought or needed medical treatment.

The Director reviewed the evidence submitted with the U petition and in response to a request for evidence and we incorporate that list of evidence here. First, the Director determined that the Petitioner was the victim of misdemeanor battery, as described in the Supplement B and incident reports, and misdemeanor battery is not felonious assault, a qualifying crime, under Illinois law.¹ Second, the Director noted that qualifying criminal activity may occur during the commission of a nonqualifying crime, but the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. In this case, although the Petitioner provided statutory language for mob action and aggravated assault, 720 Ill. Comp. Stat. Ann. 5/25-1 and 720 Ill. Comp. Stat. Ann. 5/12-2 respectively, he did not provide evidence that law enforcement detected either crime. Finally, the Director stated that misdemeanor battery is not substantially similar to felonious assault. In support of this determination, the Director reviewed the Illinois statute for battery, which requires the infliction of bodily harm, and mentioned that the Illinois statute for aggravated battery, 720 Ill. Comp. Stat. Ann.

¹ We note that under Illinois law, assault and battery are in the same category of crime, as the only difference between the two offenses is whether or not physical injury results. As such, a victim of aggravated assault or aggravated battery under Illinois law would be a victim of the qualifying crime of felonious assault.

5/12-3.05, requires the infliction of great bodily harm, which is defined by Illinois caselaw as more serious or grave than lacerations, bruises, or abrasions that characterize bodily harm. Based on the above analysis, the Director denied the U petition, concluding that the Petitioner did not establish he was the victim of qualifying criminal activity and therefore the remaining requirements for U nonimmigrant status could not be met.

On appeal, the Petitioner references 720 Ill. Comp. Stat. Ann. 5/12-3(a)(1), which provides that a person commits battery if he or she knowingly without legal justification by any means causes bodily harm to an individual. The Petitioner states that under Illinois law battery is elevated to aggravated battery under 720 Ill. Comp. Stat. Ann. 5/12-3.05 when there is great bodily harm. He claims that the defendants in his case should have been charged with aggravated battery as he was attacked by a mob, punched in the head and body, and suffered great bodily harm.

Additionally, the Petitioner mentions that under Illinois law battery is elevated to aggravated battery when there is bodily harm to a private security officer. He claims that the defendants in his case should have been charged with aggravated battery as he was attacked while performing his official duties as a bouncer. Furthermore, the Petitioner claims that the crime he was the victim of could have been classified as an aggravated assault since 720 Ill. Comp. Stat. Ann. 5/12-2 defines aggravated assault, in part, as an assault against an individual who is on or about a public way or is a private security officer. Lastly, the Petitioner claims that although not charged, he was clearly the victim of mob action under 720 Ill. Comp. Stat. Ann. 5/25-1, which is substantially similar to felonious assault.

Based on a de novo review of the record, we adopt and affirm the Director's decision that the Petitioner did not establish he was the victim of qualifying criminal activity and therefore the remaining requirements for U nonimmigrant status could not be met. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director's decision provided a thorough analysis of whether the Petitioner was the victim of qualifying criminal activity, as described above, and his submission on appeal does not overcome this finding. First, the Petitioner did not establish law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner, which takes the form of aggravated assault under 720 Ill. Comp. Stat. Ann. 5/12-2 or aggravated battery under 720 Ill. Comp. Stat. Ann. 5/12-3.05. Rather, the certifying official indicated on the Supplement B that the Petitioner was the victim of misdemeanor battery and listed the Illinois misdemeanor battery statute as the specific statutory citation investigated or prosecuted. In addition, the incident reports establish the Petitioner was the victim of misdemeanor battery. The Petitioner asserts that he was the victim of aggravated assault, aggravated battery, and mob action based on the facts of the underlying criminal incident. However, we note that evidence describing what may appear to be, or hypothetically could have been investigated or charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence indicating, by a preponderance of the evidence, that relevant law enforcement authorities in fact detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. §§ 214.14(a)(2), (a)(9), (b)(3). In this case, the Petitioner has not established aggravated assault, aggravated battery, or mob action were detected, investigated, or prosecuted, or that mob action is substantially similar to felonious assault. Finally, the Petitioner has not provided any assertions or evidence that would overcome the Director's

finding that misdemeanor battery is not substantially similar to aggravated battery, as he has not established that both the nature and elements of the offenses are substantially similar. Because the Petitioner has not established, by a preponderance of the evidence, that he was the victim of qualifying criminal activity, the remaining requirements for U nonimmigrant status cannot be met, and he is therefore not eligible for U nonimmigrant status under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.