



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

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

In Re: 25612330

Date: May 25, 2023

Appeal of Nebraska Service Center 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 Petitioner did not establish she was a victim of qualifying criminal activity. The matter is now before us on appeal. 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 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. 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 may occur during the commission of non-qualifying criminal activity, *see* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status* (U Interim Rule), 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007), however the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. Section 101(a)(15)(U)(i)(III) of the Act.

"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). One qualifying crime under section 101(a)(15)(U)(iii), "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).

When a certified offense is not a qualifying criminal activity specifically listed under section 101(a)(15)(U)(iii) of the Act, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. 8 C.F.R § 214.14(a)(9). Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction’s statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. *Id.*

II. ANALYSIS

The Petitioner filed her Form I-918 with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), in 2016 seeking U nonimmigrant classification based on having been the victim of battery under chapter 720, section 5/12-3(a)(2) of the Illinois Compiled Statutes (Ill. Comp. Stat.). The Director determined that battery under this section of law was punished as a misdemeanor and thus did not rise to the level of a felony as required for a felonious assault, and therefore the Petitioner did not establish that she was the victim of a qualifying criminal activity.

On appeal, the Petitioner concedes that battery is not specifically listed as a qualifying crime under section 101(a)(15)(U)(iii) of the Act, and that the nature and elements of battery must therefore be substantially similar to a qualifying criminal activity. The Petitioner also states, however, that one must look at the underlying facts of the case to determine the criminal act that took place, and claims that because the battery took place in public she was actually the victim of aggravated battery under chapter 720, section 5/12-3.05(c) of the Ill. Comp. Stat. and that this section is substantially similar to the qualifying criminal activity of felonious assault. In making this claim, however, the Petitioner does not provide a federal, state, or local jurisdiction’s statutory equivalent for felonious assault and therefore has not shown how the “nature and elements” of the crime certified as being committed against her are substantially similar to a qualifying crime.

The record establishes that Petitioner was the victim of battery under chapter 720, section 5/12-3(a)(2) of the Ill. Comp. Stat., which the Petitioner concedes is not specifically listed as a qualifying crime. As noted above, when a certified offense is not a qualifying criminal activity petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity.

At the outset, assault in Illinois requires someone to engage in conduct that places another person in reasonable apprehension of receiving a battery and is punished as a misdemeanor. 720 Ill. Comp. Stat. 5/12-1. At the time of the incident, Illinois also had a provision for aggravated assault, which increased the punishments for an assault depending on certain circumstances such as the location of the conduct, the status of the victim, or if the assault involved the use of a firearm, certain devices, or a motor vehicle. 720 Ill. Comp. Stat. 5/12-2(a)–(c) (2014). Of these aggravating circumstances, not all were punished as a felony. *See* 720 Ill. Comp. Stat. 12-2(d) (2014) (stating that subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(4), (b)(7), (b)(8), (b)(9), (c)(1), (c)(4), or (c)(9) are punished as Class A misdemeanors). Aggravated assaults that were punished as felonies included assaults against police

officers, firefighters and emergency personnel; correctional officers and employees; certain government officials; process servers; and assaults involving discharge of a firearm; use of a laser device in concert with a firearm; use of a firearm against certain law enforcement officers; and motor vehicle operation that places a person in apprehension of being struck by that vehicle. *Id.*

Battery under chapter 720, section 5/12-3(a)(2) of the Ill. Comp. Stat. requires that a person make physical contact of an insulting or provoking nature with an individual. In comparing the nature and elements of battery under chapter 720, section 5/12-3(a)(2) of the Ill. Comp. Stat. to a felonious assault under chapter 720, section 5/12-2, while there is some overlap between the two offenses, Illinois courts have generally held that an assault is distinct from a battery because a battery involves touching whereas an assault does not. *See People v. Abrams*, 271 N.E. 2d 37, 45 (Ill. 1971). Additionally, battery under chapter 720, section 5/12-3(a)(2) of the Ill. Comp. Stat. does not require the aggravating factors identified above that make an assault felonious. The Petitioner has therefore not established that the nature and elements of battery under chapter 720, section 5/12-3(a)(2) of the Ill. Comp. Stat. are substantially similar to a felonious assault in Illinois.

The Petitioner also asserts that she was the victim of an aggravated battery under chapter 720, section 5/12-3.05(c) of the Ill. Comp. Stat. because the battery occurred in public, and that because such a battery is classified as a felony, she is the victim of a felonious assault. However, a felonious assault must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred, distinct from a misdemeanor assault committed during the course of another felony. And as stated above, assault is distinct from battery, and thus being the victim of felonious battery does not necessarily establish one is the victim of a felonious assault. Thus, even if the Petitioner was the victim of aggravated battery under chapter 720, section 5/12-3.05(c) of the Ill. Comp. Stat., she still must establish that aggravated battery is substantially similar to felonious assault or another qualifying criminal activity. As noted above, however, in claiming she is the victim of aggravated battery under chapter 720, section 5/12-3.05(c) of the Ill. Comp. Stat., the Petitioner did not provide a federal, state, or local jurisdiction's statutory equivalent to compare aggravated battery as substantially similar to a qualifying crime.

We provided a citation to aggravated assault above and note that battery committed in public under chapter 720, section 5/12-3.05(c) may bear similar elements to aggravated assault under chapter 720, section 5/12-2(a) of the Ill. Comp. Stat.¹ However, an assault committed in public under chapter 720 is only punished as a misdemeanor and is not “felonious.” *See* 720 Ill. Comp. Stat. 12-2(d) (2014). Accordingly, even if aggravated battery under chapter 720, section 5/12-3.05(c) of the Ill. Comp. Stat. was detected or investigated as perpetrated against the Petitioner, and was substantially similar to chapter 720 section 5/12-2(a) because it was committed about a public way or on public property, it still would not be substantially similar to a “felonious” assault. The Petitioner does not assert the battery involved a police officer, firefighter or emergency personnel, correctional officer or employee, government official, process server, discharge or use of a firearm, use of a laser device, or a motor vehicle that might reflect a felonious assault occurred. As the Petitioner has not identified a felonious

¹ Chapter 720 section 5/12-2(a) of the Ill. Comp. Stat. at the time of the incident included the language “against an individual who is on or about a public way, public property, a public place of accommodation or amusement, or a sports venue,” and chapter 720 section 5/12-3.05(c) of the Ill. Comp. Stat. included the language “the person battered is on or about a public way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter.”

assault provision or other qualifying criminal activity that aggravated battery is substantially similar to, the Petitioner has not established by a preponderance of the evidence that she was the victim of a felonious assault or any other qualifying criminal activity.

III. CONCLUSION

U nonimmigrant classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. As noted by the Director, because the Petitioner has not established that she was the victim of qualifying criminal activity, she necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.