



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

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

In Re: 24172831

Date: FEB. 28, 2023

Appeal of Vermont 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 Vermont Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the Petitioner did not establish he was a victim of qualifying criminal activity, or a crime substantially similar to a 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.

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). While 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), 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).

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).

The Petitioner filed his Form I-918 with a Supplement B in 2016 seeking U nonimmigrant classification based on having been the victim of a battery under section 784.03 of the Florida Statutes Annotated (FSA). In a request for evidence, the Director advised that battery was not one of the qualifying criminal activities specifically listed in regulations and therefore requested evidence that it was related to a qualifying criminal activity. In response, the Petitioner submitted an updated Supplement B that identified section 784.03 of the FSA as the crime detected or investigated and indicated that the Petitioner was the victim of a "felonious assault." Despite the citation to section 784.03 of the FSA in the supplement B, the Petitioner stated that USCIS must look at the facts of the criminal activity to determine whether the Petitioner was the victim of an enumerated crime and then suggested that the criminal activity investigated was actually a felony-level assault under section 784.021 of the FSA because there was an assault committed with the intent to commit a felony. Specifically, the Petitioner claimed that the Petitioner was the victim of an assault pursuant to section 784.011 of the FSA coupled with an intent to commit aggravated stalking which made him a victim of both felonious assault and stalking. The Director denied the Form I-918 after concluding, in part, that an assault did not occur during the commission of aggravated stalking, that battery under section 784.03 of the FSA was not substantially similar to felonious assault or stalking, and that the Petitioner thus did not establish he was the victim of a qualifying criminal activity.

On appeal, the Petitioner claims that the Director erred by concluding his submission did not demonstrate that simply battery constituted a qualifying criminal activity and repeats his assertion that we must look beyond the specific crimes that were charged or prosecuted to determine whether the Petitioner was a victim of a qualifying criminal activity. The Petitioner concedes that section 784.03 of the FSA was certified by law enforcement as the crime investigated but points out that the certifying official also claimed the Petitioner was the victim of a "felonious assault" and that the facts underlying the investigation make it clear that the perpetrators caused "serious physical injury," which satisfies Florida's definition of assault as a felony. We agree that the Petitioner was the victim of battery under section 784.03 of the FSA but disagree that the Petitioner was a victim of a qualifying criminal activity because a qualifying crime was not detected, investigated, or prosecuted.

To start, we noted above that we determine, in our sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Additionally, evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence that law enforcement actually detected, investigated, or prosecuted the qualifying crime as perpetrated against the petitioner. In this case, despite the certifying official's reference to a felonious assault, the record establishes that the Petitioner was the victim of a misdemeanor-level battery under section 784.03 of the FSA and was not the victim of a felonious assault. We note that both Supplements B list section 784.03 of the FSA as

the statutory citation for the criminal activity that was investigated or prosecuted. The Supplements B also indicate that the perpetrator struck the Petitioner in the face and kicked him several times in the torso and stomach area, which is consistent with the requirement in section 784.03 of the FSA that a person touch or strike another person causing “bodily harm.” These descriptions of the harm suffered by the Petitioner are repeated in the police report as well. While the Petitioner claims to have lost vision in his right eye as a result of the incident, neither the Supplements B or police report reflect this injury occurred and the record otherwise does not include any medical records that describe the nature and degree of the claimed injury. Thus, the record establishes that law enforcement detected and investigated, and the Petitioner was the victim of, misdemeanor-level battery under section 784.03 of the FSA, which is not a qualifying criminal activity.

The Petitioner claims, however, that the same evidence above is sufficient to establish he was the victim of a felonious assault. Qualifying criminal activity may occur during the commission of non-qualifying criminal activity and thus it is possible that the Petitioner could establish a felonious assault occurred during the battery, but the Petitioner has not established by a preponderance of the evidence that a felonious assault was detected or investigated in this case. Initially, we note that Florida courts have held that assault is not necessarily a lesser included offense of battery, and thus the evidence showing that the Petitioner was the victim of a battery does not by itself establish that he was the victim of an assault. *See Garcia v. State*, 594 So.2d 806, 807 (Fla. Dist. Ct. App. 1992). Additionally, while the Petitioner claims that the perpetrators caused “serious physical injury” that satisfies Florida’s definition of assault as a felony, he does not provide the specific statute that he is referring to.

The Director had analyzed whether the Petitioner was potentially a victim under section 784.021 of the FSA based on his claim that the perpetrator had the intent to commit felony-level stalking during the commission of an assault. The Director concluded, however, and we agree, that stalking was not committed during the battery because stalking in Florida requires *repeated* instances of following, harassment, or cyberstalking, whereas the record does not reflect that any instance of following, harassment, or cyberstalking associated with the battery in this case was anything but an isolated incident. *See FSA* § 784.048. The Petitioner does not claim any error in the Director’s decision that stalking was not committed during the battery. The Petitioner further does not specify any other felony that was detected or investigated during the incident or that a deadly weapon was used and therefore does not establish that a felonious assault was detected or investigated during the battery.

The Petitioner has not established that he was the victim of a qualifying criminal activity. 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 the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.