



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

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

In Re: 28673882

Date: NOV. 20, 2023

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner, a citizen of Romania, 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 2017 seeking U nonimmigrant classification based on having been the victim of battery under chapter 720, section 5/12-3(a)(1) of the Illinois Compiled Statutes (Ill. Comp. Stat.). The Director determined that the elements of battery under 720 ILCS § 5/12-3 do not include the mitigating and aggravating factors found in 720 ILCS § 5/12-2, aggravated (felonious) assault, to make battery substantially similar to felonious assault. The statute investigated in this case involves causing bodily harm to the individual. The crime which was investigated was simple battery, not aggravated battery, 720 ILCS § 5/12-3.05, 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. The Petitioner claims:

[The Petitioner] was a victim of battery and theft over \$500.00 in that she [was] struck repeatedly in the face with a closed fist, as such she is the victim of a felonious assault which is a qualifying U visa crime. Whereby, the offender continued to strike her in the face until bystanders intervened and saved [the Petitioner], preventing her from sustaining further injuries.

The Petitioner asserts that whether she suffered “great bodily harm versus bodily harm is subjective, and that is why there is no ‘great bodily harm’ in the regulations for felonious assault.” The Petitioner relies on non-precedent AAO decisions¹ that purportedly went beyond comparing the elements and means in the conviction statute by considering the underlying facts of the case as gleaned from the record. The Petitioner cites as an example *In re 01114583*, 2018 WL 2717434 (AAO May 15, 2018)(referred to as *Matter of M-R-B-C* in the Petitioner’s brief), in which the AAO went beyond analyzing the elements of the crimes listed in Part 3.I of the Supplement B as having been investigated

¹ Non-precedent decisions are not published as a precedent and therefore do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

or prosecuted, by considering the underlying record which, in the individualized facts of that case, contained the Supplement B, criminal complaint, police report, and contemporaneous medical records.

The instant record does not contain a criminal complaint and does not contain contemporaneous medical records showing that the perpetrator intended and actually caused serious physical injury to the Petitioner. The [] Police Department Original Case Incident Report states the Petitioner “sustained contusions to her lip, the inside of her mouth and her head and will seek medical attention on her own.” The Petitioner’s record, however, does not contain medical records and does not reflect that the Petitioner contemporaneously sought medical attention. The record does not show that the perpetrator intended and actually caused serious physical injury to the Petitioner and does not establish that she was a victim of a felonious assault.

We adopt and affirm the Director’s decision with the comments below. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *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).

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) (2016). Of these aggravating circumstances, not all were punished as a felony. See 720 Ill. Comp. Stat. 12-2(d) (2016) (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 peace officers, firefighters and emergency personnel; correctional officers and employees; certain government officials; process servers; and assaults involving discharge of a firearm (not from a motor vehicle); 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)(1) of the Ill. Comp. Stat. requires that a person causes bodily harm to an individual. In comparing the nature and elements of battery under chapter 720, section 5/12-3(a)(1) 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)(1) 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)(1) of the Ill. Comp. Stat. are substantially similar to a felonious assault in Illinois.

As the Petitioner has not identified a felonious assault provision or other qualifying criminal activity that is substantially similar to aggravated battery under chapter 720, section 5/12-3(a)(1) of the Ill.

Comp. Stat., 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

Unimmigrant 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.