



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

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

In Re: 20047484

Date: MAR. 8, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U-1 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), as the victim of qualifying 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 that she was the victim of qualifying criminal activity. The matter is now before us on appeal. On appeal, the Petitioner submits evidence and a brief asserting she was the victim of qualifying criminal activity. The Administrative Appeals Office reviews 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 remand the matter to the Director for the issuance of a new decision.

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; 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.

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 and the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 &N Dec. 369, 375 AAO 2010). As a part of meeting this burden, 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 petitioner must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(i)-(iii). 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

A. Relevant Facts and Procedural History

The Petitioner filed her U petition in March 2016 with a Supplement B signed and certified by a lieutenant in the [REDACTED] Police Department in [REDACTED] Arkansas (certifying official). On part 3.1 of the Supplement B, the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault" and "Attempt to commit any of the named crimes." In Part 3.3, the certifying official listed sections 5-39-204 (aggravated residential burglary), 5-13-202 (second degree battery), and 5-13-301 (terroristic threats) of the Arkansas Code Annotated (Ark. Code Ann.) as the specific statutory citations investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, the certifying official indicated that two suspects severely beat the Petitioner's spouse, she tried to break up the fight and the suspects began to beat her, and the suspects threatened to kill her and her family. When asked to describe any known injury to the Petitioner, the certifying official stated she "had several scratches in different parts of her body, and her ankle was injured. She was transported to [REDACTED] Medical Center for treatment. She and her family also suffered emotional trauma as a result of the incident."

A [REDACTED] Police Department Narrative submitted with the U petition identified the offenses committed during the course of the incident as residential burglary, battery, and terroristic threatening. The narrative provided that the two suspected knocked on the Petitioner's door, her spouse was pulled outside where they began punching him, she ran outside to break up the fight, the suspects began to fight with her, her ankle was injured and began swelling, and she was transported to the hospital for treatment.

In response to the Director's request for evidence (RFE), the Petitioner submitted an updated Supplement B signed and certified in February 2021 by a different certifying official, the captain of the [REDACTED] Police Department. This Supplement B otherwise included the same information as the initial Supplement B. Furthermore, the record includes multiple statements from the Petitioner which include details similar to those mentioned above. The Director denied the U petition, concluding that the Petitioner did not establish that she was the victim of qualifying criminal activity.

B. The Petitioner was a Victim of the Qualifying Crime of Felonious Assault

The Act requires U petitioners to demonstrate their helpfulness to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as certified on a Supplement B from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term

“investigation or prosecution” of 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*, 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; *see also* 8 C.F.R. § 214.14(b)(3) (requiring helpfulness “to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based . . .”).

On appeal, the Petitioner asserts that the evidence in the record is sufficient to establish that law enforcement detected, investigated, or prosecuted, and she was the victim of, the qualifying crime of felonious assault. The record reflects that law enforcement detected and investigated battery in the second degree under section 5-13-202 of Ark. Code Ann., which stated in part at the time of the offense in 2010, “[a] person commits battery in the second degree if . . . [w]ith the purpose of causing physical injury to another person, the person causes serious physical injury to any person. . .” Section 5-13-202 of Ark. Code Ann. classifies battery in the second degree as a class D felony, which is defined in section 5-4-401 of Ark. Code Ann. as a sentence not exceeding six years. Under Arkansas law, a person is guilty of aggravated assault, the state-law equivalent to felonious assault, if “under circumstances manifesting extreme indifference to the value of human life, he or she purposely . . . [e]ngages in conduct that creates a substantial danger of death or serious physical injury to another person . . .” Ark. Code Ann. § 5-13-204(a)(1) (West 2021). A conviction under this statute is a Class D felony. *Id.* at 5-13-204(b).

We note that under Arkansas 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. In assessing the relationship of an assault offense to a battery offense, the Supreme Court of Arkansas referenced the commentary following the first-degree assault statute at that time, stating, “[i]n some jurisdictions, ‘battery’ has ceased to exist as a separate offense, its elements having been assimilated into assault provisions. The Commission, however, felt that assaults and batteries were worthy of treatment as separate offenses having distinct criminal sanctions. Accordingly, the Code preserves the conceptual distinction drawn between ‘assaults’ and ‘batteries’ by present law. Under the Code, conduct is denominated a ‘battery’ or ‘assault’ depending on whether or not physical injury results.” *Harmon v. State*, 543 S.W.2d 43, 47 (1976). Considering the foregoing, Arkansas courts view the crime of battery as a consummated assault, in that the only difference between the two crimes is whether a physical injury occurred. Thus, as battery in the second degree under section 5-13-202 of Ark. Code Ann. is a felony, the Petitioner has established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted, and she was a victim of, felonious assault, a qualifying crime. Therefore, we will remand the matter to the Director for consideration of whether the Petitioner has met the remaining eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of new decision consistent with the foregoing analysis.