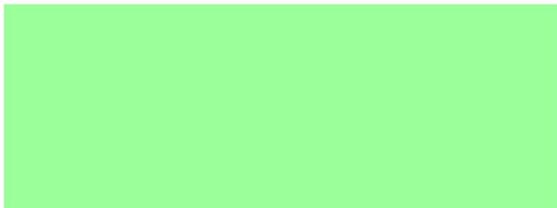


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **JAN 15 2015** Office: **VERMONT SERVICE CENTER** FILE:

IN RE: PETITIONER:

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner did not establish that: he was the victim of qualifying criminal activity; he suffered resultant substantial physical or mental abuse; he possessed information regarding qualifying criminal activity; or he was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submits a brief and additional evidence.

*Applicable Law*

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
- (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

Felonious assault is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . .:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States in September, 2008, without admission, inspection or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on May 1, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On May 23, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime. The director also requested two passport-style photographs of the petitioner. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner asserts that although the police report classified the crime as misdemeanor battery, the actual crime investigated was felony battery because he suffered serious bodily injury.

*Claimed Criminal Activity*

In his declaration, the petitioner recounted that on November [REDACTED] when he was 11 years old, he was assaulted by two men while waiting for his bus. He was punched in the head by one of the suspects and his baseball cap fell off. When he bent down to pick up his cap, one of the suspects punched him in his face. He lost consciousness and does not recall how many times he was hit, but when he regained consciousness, he went home. When his parents saw him, they took him to the police station to report the incident.

The Form I-918 Supplement B that the petitioner submitted was signed by Lieutenant [REDACTED] Youth and Family Services Division, [REDACTED] California, Police Department (certifying official), on April [REDACTED]. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and battery. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 242, battery, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that on November [REDACTED] the petitioner was approached by two black males at a bus stop and one of the males hit the petitioner "in the face with a closed fist." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that according to the petitioner, he was "hit in the face with a closed fist. The reporting officer observed no visible injuries."

*Analysis*

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

Misdemeanor Battery under California Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and crime report from the [REDACTED] Police Department indicate that misdemeanor battery was investigated. The crime of misdemeanor battery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar

activity” to the enumerated crimes, the regulation defines “any similar activity” as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the misdemeanor battery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under California law, misdemeanor battery is “any willful and unlawful use of force or violence upon the person of another.” Cal. Penal Code § 242 (West 2014). In California, in pertinent part, felony battery occurs when serious bodily injury is inflicted during the battery. Cal. Penal Code § 243(d) (West 2014). Serious bodily injury is defined as “a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.” Cal. Penal Code § 243(f)(4) (West 2014). California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2014). Assault with a deadly weapon or force likely to produce great bodily injury is defined as, in pertinent part:

(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245 (West 2014).

No elements of misdemeanor battery under Cal. Penal Code § 242 are similar to assault under Cal. Penal Code §§ 240 or 245. The statute investigated in this case involves using willful or unlawful force or violence upon another, and does not specify the commission of violent injury as a necessary component. Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon. In addition, in pertinent part, felony battery involves the infliction of serious bodily injury. The distinction between the battery statutes is recognized under California law, which categorizes battery under CPC § 242 as a misdemeanor. Therefore, the offenses are not substantially similar.

The certifying official’s indication at Part 3.1 that the petitioner was the victim of a felonious assault is without support in the record. The only crime certified at Part 3.3 of the Form I-918 Supplement B was battery, and the crime report noted that the crime was CPC § 242 (battery). There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the petitioner, and the certifying official does not explain why at Part 3.3 he provided a citation for misdemeanor battery, not felonious assault under California law, if a felonious assault against the petitioner was actually investigated or prosecuted.<sup>1</sup> We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal

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<sup>1</sup> We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4).

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activity was investigated or prosecuted. Here, the evidence of record does not demonstrate that the crime of felony assault was investigated or prosecuted.

On appeal, the petitioner claims that he is a victim of felony battery because he suffered a serious bodily injury, and felony battery is substantially similar to felony assault under California law. In a letter dated December 19, 2013, Lieutenant [REDACTED] indicates that based on the crime report, the petitioner's case "should have been amended to felony battery"; however, his conclusion fails to demonstrate that a felony battery was actually detected or investigated at the time the crime was reported or thereafter, and the police reports in the record also do not show the detection of a felony assault or battery. Additionally, Lieutenant [REDACTED] did not submit an updated or amended Form I-918 Supplement B indicating that felony battery or felony assault were investigated or prosecuted by the certifying agency.

As previously stated, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crime that was investigated and the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). The petitioner has not provided the requisite statutory analysis to demonstrate that the nature and elements of CPC § 242 (misdemeanor battery) are substantially similar to CPC §§ 240/245 (assault) or 243(d)(felony battery), or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

#### Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

#### Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

#### Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

#### Jurisdiction

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal

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law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

*Conclusion*

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.