U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21841515

Date: APR. 11, 2022

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity at 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 Form I-918, Petition for U Nonimmigrant Status (U petition), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on motions to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and, establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and shows proper cause for reopening the proceeding or reconsideration of the prior decision. 8 C.F.R. § 103.5(a)(1). The burden of proof is on the petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The U-1 classification affords nonimmigrant status to victims of qualifying criminal activity who suffer substantial physical or mental abuse as a result of the crime. Section 101(a)(15)(U)(i) of the Act. To be eligible for U-1 nonimmigrant status, the petitioner must also possess information about the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of the crime. *Id.*

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 U petitions. 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).

II. ANALYSIS

In our prior decision, incorporated here by reference, we determined that the Petitioner had not established his eligibility for U-1 status because he had not satisfied initial evidence requirements. Specifically, we concluded that the record below and on appeal did not contain a Supplement B that was properly executed as required by 8 C.F.R. 214.14(c)(2)(i). We acknowledged a new third Supplement B, executed in June 2020, that was submitted on appeal, but determined that the record did not establish that C-R-, the individual who signed it, was a properly designated certifying official, which is defined as "[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency" or a "Federal, State, or local judge." 8 C.F.R. §§ 214.14(a)(3)(i) and (ii), (c)(2)(i). We additionally noted that the record did not contain a properly executed Supplement B that was signed by the certifying official within the six months immediately preceding the filing of the U petition, as required by 8 C.F.R. § 214.14(c)(2)(i).

On motion, the Petitioner submits a letter from the certifying agency verifying that C-R- was a properly designated certifying official at the time she signed the June 2020 Supplement B. The Petitioner asserts, therefore, that our dismissal of his appeal was erroneous because the June 2020 Supplement B was properly signed and executed.

The Petitioner has demonstrated on motion that the June 2020 Supplement B submitted on appeal was signed by a properly designated certifying official. However, he has not addressed our determination that the record lacked a properly executed Supplement B signed within the six months immediately preceding the filing of his U petition. The regulation plainly states that a Supplement B that is not signed within the six-month period prior to the filing of the U petition does not satisfy initial evidence requirements. 8 C.F.R. § 214.14(c)(2)(i) (describing initial evidence that must be submitted with the filing of a U petition, including a Supplement B signed "within the six months immediately preceding the filing of [the U petition]"); s*ee also* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007) (explaining that the six-month requirement was established to "seek a balance between encouraging the filing of petitions and preventing the submission of stale certifications."). The Petitioner has not identified, and we are unaware of, any authority that would permit the AAO or USCIS to disregard its own regulations regarding the filing and initial evidence requirements for the U petition. We lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry "the force and effect of law"). Here, the Petitioner filed his U petition in June 2015. In addition to the June 2020 Supplement B submitted on appeal, the Petitioner submitted two other Supplement B forms below that were signed in July 2014 and October 2019. The first Supplement B submitted by the Petitioner was signed nearly a year preceding the filing of the U petition, as noted by the Director. The other two Supplement B forms submitted below were both signed over 4 years after the date the petition was filed. As such, the Petitioner has not overcome the Director's decision that he had not satisfied the initial evidence requirements of 8 C.F.R.

§ 214.14(c)(2)(i) and therefore is not eligible for U nonimmigrant status under section 101(a)(15)(U) of the Act.

III. CONCLUSION

The Petitioner's new evidence and facts on his motion to reopen before us are not sufficient to overcome our prior adverse decision. He also has not established that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

Although we acknowledge the Petitioner was the unfortunate victim of a crime, he has not established that he provided a Supplement B signed by the appropriate official within the six months immediately preceding the filing of his U petition, as required.[1] Accordingly, as he has not established his eligibility for U-1 nonimmigrant status, his motions to reopen and reconsider our prior adverse decision is dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] This decision is without prejudice to the filing of a new U petition by the Petitioner with a properly executed Supplement B signed in the six months preceding any such filing.