U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23214399

Date: NOV. 28, 2022

Motion on Administrative Appeals Office 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). The Director of the Nebraska Service Center (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner was not a victim of a qualifying criminal activity under the Act, aggravated robbery was not a qualifying criminal activity, and the Petitioner did not possess credible and reliable information of a qualifying crime. We dismissed the Petitioner's subsequent appeal in March 2022. However, due to a clerical error, the Petitioner received a decision that was intended for another. The Petitioner now files a motion to reopen and a motion to reconsider,[1] asserting that she was the victim of a qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. Upon review, we will dismiss the motions.

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 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).

[1] We note that the Petitioner has not requested that another decision be re-issued in her case because she located her decision within the repository of publicly published non-precedent decisions on the USCIS website at www.uscis.gov.

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.[2] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider in establishing that they are a victim of qualifying criminal activity and has otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii)-(iii).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). 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).

A motion to reopen must state new facts to be proved 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 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). After a review of the record, both motions will be denied.

II. ANALYSIS

In our prior decision, incorporated here by reference, we dismissed the Applicant's appeal because she did not establish that she was a victim of a qualifying criminal activity. In that decision, we noted that the record contained multiple unexplained inconsistences regarding the Petitioner's whereabouts and involvement during the commission of the crime forming the basis for the U petition. According to the first Supplement B, the certifying official stated that "the victim and her small son were in the parking lot of the [store] where they were threatened at gunpoint by two masked gunmen who were robbing the business." Regarding the Petitioner's helpfulness in investigating and/or prosecuting the crime, he referenced the "attached offense reports." However, no reports were attached to the first Supplement B. Moreover, despite the Petitioner's claim in her initial affidavit, and her October 2019 affidavit that she was the person who called police and spoke with the officers,[3] the offense report indicated that another individual was the complainant and stated that there were two employees/victims, neither of whom was the Petitioner. The offense report further detailed the conversations that the officers had with three other individuals who assisted in the apprehension of the perpetrators; but did not include the Petitioner despite the Petitioner's assertions that she had called and spoken with law enforcement. The mental health evaluation stated that the Petitioner and her son were outside in the parking lot while the robbery occurred inside the store, but the August 2019

[2] The Supplement B also provides information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted and gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

[3] The Petitioner claimed that "the police were at the store soon after I called. . . . I told them about the incident and provided as much information as I had . . . ."

Supplement B later claimed that she and/or her son were held hostage. However, there was no evidence other than the Petitioner's statement that there were any hostages. The letter from the police chief and her concession on appeal that she left the store did not address or overcome these inconsistencies or establish that she was a victim of the crime as certified on the Supplements B.

In support of her motion, the Petitioner submits a brief from her attorney[4] which argues that: we erroneously applied the law; she was a victim who suffered substantial abuse because a firearm was pointed at her and her son; she experienced fear because her family was in the store where the crime occurred; generally, a child who is exposed to chronic trauma can experience future inhibited brain development; even though she was not listed as a witness on the police report, it was her intention to assist the investigation and that by signing the Supplements B, the police believed that she was a victim; and because her first language is not English, it was difficult for her to provide clear and consistent testimony which accounts for her multiple explained inconsistences in the record. The Petitioner's arguments are unavailing. At the outset, we note that prior to the motion brief, the Petitioner has never indicated that she had difficulties with the English language. Moreover, we note that the mental health evaluator reported that the Petitioner attended college in India where she studied psychology and the English language, and she resided in [redacted] England for several years before entering the United States. As such, the Petitioner's argument on motion regarding her English language skills does not resolve or explain the multiple inconsistencies in the record.

In addition, although we acknowledge and have considered the Petitioner's remaining arguments on motion, they do not address or otherwise resolve the multiple unexplained inconsistencies identified in our previous decision dismissing her appeal. Moreover, the Petitioner has not submitted new evidence establishing her eligibility for relief. Considering the totality of the evidence and the various inconsistencies that remain in the record, the Petitioner has not established by a preponderance of the evidence that she was a victim of any qualifying criminal activity. Therefore, the Petitioner has not met the requirements for a motion to reopen or reconsider.[5]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

---

[4] The Petitioner also re-submits her October 2019 affidavit; 2014 [redacted] Police Department Offense/Incident Report; August 2019 [redacted] Police Department Incident supplement; August 2019 Memorandum from [redacted] Police Department; August 2019 Supplement B; copy of the Director's November 2019 Decision; 2014 medical visit summary for the Petitioner's son; December 2019 memorandum from the current police chief stating that it is believed and reported that one of the two suspects pointed a firearm at the Petitioner and her son, causing them to fear for their lives; and the March 2015 mental health evaluation of the Petitioner.

[5] We need not reach the issue of whether aggravated robbery under Texas Penal Code § 29.03 is a qualifying criminal activity under the Act and, therefore, reserve it. Our reservation of this issue is not a stipulation that the Applicant overcame this alternate ground of denial and should not be construed as such. Rather, there is no constructive purpose to addressing eligibility under section 212(h) of the Act because it cannot change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (explaining that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).