U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24911398

Date: FEB. 10, 2023

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status, concluding that the Petitioner failed to submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), as required initial evidence. The Petitioner subsequently submitted motions seeking reconsideration or reopening of the Director's decision, all of which were dismissed by the Director. 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.

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.

As required initial evidence, petitioners must submit a Supplement B from a law enforcement official certifying their 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).

The Petitioner filed his Form I-918 in 2017 seeking U nonimmigrant classification based on having been the victim of a theft that occurred in 2002. The Director denied the Form I-918 for lack of initial required evidence because the Petitioner did not submit a Supplement B. The Petitioner subsequently filed a motion to reconsider the decision, as well as three motions to reopen, that were dismissed by the Director. The Petitioner most recently submitted a motion to reopen and reconsider that the Director also dismissed pursuant to 8 C.F.R. § 103.5(a)(4) after concluding that the motion did not

meet the applicable requirements.[1] On appeal, the Petitioner claims that while he did not file a Supplement B, the Director should have requested the missing initial evidence rather than deny his Form I-918, and that, regardless, a Supplement B is either nonexistent or unavailable to him.

The Petitioner's claims on appeal are unavailing. Regarding whether the Director should have issued a request for evidence for the Supplement B instead of denying the Petitioner's Form I-918, we note that regulations do not require the issuance of a request for evidence when eligibility is not established at the time of filing. *See* 8 C.F.R. § 103.2(b)(8)(ii). In fact, 8 C.F.R § 103.2(b)(8)(ii) allows USCIS in its discretion to either deny an application or petition for lack of initial evidence *or* request the missing initial evidence through a request for evidence. Accordingly, the Petitioner has not established that the Director must have issued a request for evidence rather than deny his Form I-918 and therefore has not overcome the basis for the Director's denial of his Form I-918.

Regarding the Petitioner's claim that a Supplement B is nonexistent or unavailable because potential certifying officials in his state are resistant to completing the Supplement B, we recognize that petitioners may have difficulty obtaining certifications from law enforcement and the harsh outcome this creates. However, as we noted above, a certification from a law enforcement official is specifically required by statute at section 214(p)(1) of the Act. Such a certification must be provided through a Supplement B pursuant to regulation at 8 C.F.R. § 214.14(c)(2)(i). Despite the Petitioner's reference to 8 C.F.R. § 103.2(b)(2) regarding the nonexistence or unavailability of evidence, we lack the authority to waive this statutory requirement, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that governing regulations are binding on government officials). Our review of the record does not show that the Petitioner filed a Supplement B with his original submission. Because the Petitioner did not file his Form I-918 with the required Supplement B, he is not eligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.

[1] Generally, there is no appeal of the Director's decision to deny a motion to reopen or reconsider unless the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6). The denial of the Petitioner's Form I-918 for lack of initial evidence, however, is not barred from appeal by statute or regulation and thus the Director's decision to deny the Petitioner's motion to reopen and reconsider remains appealable to the AAO. *See* e.g., 8 C.F.R § 103.2(a)(7)(iii), (b)(15) (prohibiting appeal of rejected, withdrawn, or abandoned applications and petitions under certain circumstances).