U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25822216

Date: May 19, 2023

Appeal of Vermont 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 a victim of qualifying criminal activity. The Director denied a motion to reopen and reconsider. The matter is now before us on appeal of the denial of the motion to reopen and reconsider the decision. 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, 376 (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.

The Director of the Vermont Service Center (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition), for lack of initial evidence, because the initial filing of the Petitioner's Form I-918 was not accompanied by a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B). As required initial evidence, petitioners must submit a Supplement B, from a law enforcement official certifying the petitioners' helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B must be signed by the certifying official within the six months immediately preceding the filing of the U petition. 8 C.F.R. § 214.14(c)(2)(i). Although a petitioner may submit any evidence for us to consider, we determine, in our sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

The Director noted that because the record did not contain a properly executed Form 1-918, Supplement B, the Petitioner did not establish that he was a victim of qualifying criminal activity; that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity; that he possessed information about the qualifying criminal activity, that he has been or is being, or that likely to be helpful to law enforcement in relation to the qualifying criminal activity; or that the qualifying criminal activity occurred in the United States or the territories and possessions of the United States, or violated U.S. federal law.

[1] The Supplement B also provides factual 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.

The Petitioner filed a motion to reopen and reconsider to the Director accompanied by the two Supplements B, one signed July 2019 (which was not previously submitted) and a new one signed February 2022 and other evidence. The Petitioner asked the Director to reopen and reconsider the case as a matter of discretion so that the Petitioner and his derivative relatives would benefit from an earlier priority date. The Director denied the motion to reopen and reconsider..

On appeal, the Petitioner reasserts that the Director should have exercised discretion to issue a Request for Evidence for the missing Supplement B rather than issue a denial. Petitioner's brief states that the Petitioner "is in the process of submitting a new initial filing to the U-visa service center, however he asserts that he is entitled to his original priority date and that his appeal be sustained and his case be reopened and reconsidered and that the Service accept a copy of his old and new Supplement B in the record with his initial filing." (Emphasis added).

We adopt and affirm the Director's decision. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Arango-Aradondo v. INS, 13 F.3d 610, 613 (2d Cir. 1994) (upholding summary affirmance by the BIA when the decision below contains sufficient reasoning and evidence to determine that the requisite factors were considered); Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); and Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Petitioner argues on appeal that the Director ignored U.S. Citizenship and Immigration Services (USCIS) policy by denying his U petition without first issuing a request for evidence (RFE) regarding the lack of a properly executed Supplement B. However, at the time of the Director's decision, neither the statute, regulations, nor relevant USCIS policy required the issuance of an RFE where eligibility was not established at the time of filing. See 8 C.F.R. § 103.2(b)(8)(ii) (stating that,"[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . . ."); see also USCIS Policy Memorandum PM-602-0085, Requests for Evidence and Notices of Intent to Deny 2 (June 3, 2013), https://www.uscis.gov/legal-resources/policy-memoranda (providing guidance to USCIS adjudicators as to when and if to issue an RFE, but nowhere relieving the petitioner from the burden of providing initial evidence, as required under the regulations).

Accordingly, the Director properly exercised discretion and denied the U petition without first issuing an RFE because the Petitioner failed to submit required initial evidence. Although we recognize the harsh outcome in this case, we lack 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) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials).

In addition, Petitioner's attorney does not cite to any statute, regulation, or policy in support of his argument that the Petitioner is "entitled" to reopening and reconsideration for application of the earlier priority date of July 2019. As set forth supra, issuance of a RFE is purely discretionary. Here, USCIS

did not issue an RFE. Cf. 8 C.F.R. § 103.2(b)(10) (preserves a priority date only when USCIS issues a discretionary RFE).

ORDER: The appeal is dismissed.