U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28106320

Date: SEP. 20, 2023

Motion on Administrative Appeals Office 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. We dismissed a subsequent appeal after explaining that a Supplement B is specifically required as initial evidence by statute at section 214(p)(1) of the Act, that denial of a petition is appropriate when it lacks initial evidence, and that the Petitioner did not file a Supplement B. The matter is now before us on motion to reconsider.

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). Upon review, we will dismiss the motion.

A motion to reconsider must establish 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). The scope of a motion is limited to the prior decision, and jurisdiction for the motion is limited to the official who made the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on 8 C.F.R. § 103.2(b)(8)(ii) and 103.2(b)(2)(i) to assert that USCIS has the discretion to request missing initial evidence such as the Supplement B, and that one can submit secondary evidence when required initial evidence is unavailable. The Petitioner then cites to 8 C.F.R. § 103.2(b)(1) for the proposition that any evidence submitted with a petition is incorporated into the petition and notes that he provided proof of criminal activity for which he was a victim as secondary evidence. The Petitioner then claims that where USCIS can either deny a petition for lack of initial evidence or request the missing evidence through a request for evidence, USCIS must act in a manner most favorable to a petitioner, namely by requesting evidence instead of denying the petition.

As noted in our previous decision, 8 C.F.R § 103.2(b)(8)(ii) allows USCIS in its discretion to either request missing initial evidence through a request for evidence *or* deny a petition for lack of initial evidence, and the Petitioner has not established that the Director must issue a request for evidence rather than deny a petition. Furthermore, a certification from a law enforcement official is specifically required by statute through a Supplement B and we lack the authority to waive this statutory requirement. *See* section 241(p)(1); 8 C.F.R. § 214.14(c)(2)((i); *United States v. Nixon*, 418 U.S. 683, 695-96 (1974). The Petitioner did not file his Form I-918 with the required Supplement B and he is therefore not eligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.