U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-

DATE: AUG. 17, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and we dismissed a subsequent appeal. In our prior decision, incorporated here by reference, we concluded that the Petitioner had not established that he was a victim of qualifying criminal activity or criminal activity substantially similar to a qualifying crime, and consequently, he was also unable to satisfy the statutory criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief and claims that we failed to consider a Form I-918, Supplement B, U Nonimmigrant Status Certification (Supplement B), that he submitted, disregarded other factual information, and misapplied the law.

The Petitioner also requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Upon review, we will deny the motion to reconsider.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any

evidence for us to consider in our review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). II.

II. ANALYSIS

Upon a full review of the record, the Petitioner has not overcome the ground for denial.

In our prior decision, we found that the only criminal activity certified at Part 3.1 of the Supplement B was embezzlement, which is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act; that the certifying official cited to the corresponding California statute for Grand Theft by Embezzlement in Part 3.3 of the Supplement B; and that the certifying official specifically indicated that the crime investigated or prosecuted was not one of the crimes specified at Part 3 of the Supplement B. We further found that the underlying investigative report in the record of proceedings also indicated that the offense committed was embezzlement and therefore the record of proceedings lacked any evidence from the certifying official or law enforcement records that the qualifying criminal activities of extortion, trafficking, and involuntary servitude (labor abuse) were also investigated or prosecuted, as the Petitioner maintained. Consequently, we determined that the Petitioner had not established that he was a victim of qualifying criminal activity and could not demonstrate his eligibility for U nonimmigrant classification under the statutory criteria set forth in section 101(a)(15)(U)(i) of the Act.

On motion, the Petitioner asserts again that the record establishes his eligibility for U nonimmigrant classification. The Petitioner contends that because of the embezzlement he became the victim of the crimes of extortion, trafficking, and involuntary servitude. The Petitioner cites to U.S. federal statutes related to involuntary servitude and California Penal Code sections related to extortion, contending that he was the victim of the crimes of extortion and blackmail. The Petitioner also asserts that we did not consider a new Supplement B submitted on appeal. The record of proceedings contains a second Supplement B, signed by a certifying official on August 20, 2015; it does not indicate a specified crime at Part 3.1, but rather indicates: Other: embezzlement. A handwritten note at Part 4.5 states "no additional information for this incident has been provided."

As we stated in our prior decision, our factual inquiry focuses on only whether the Supplement B and the record establish that the certifying agency detected, investigated, or prosecuted a qualifying crime. *See* Section 214(p)(1) of the Act; 8 C.F.R. §§ 214.14(c)(2) (law enforcement certification must state that the petitioner is the victim of qualifying criminal activity the certifying agency is investigating or prosecuting). Even if a qualifying crime occurred during the commission of non-qualifying criminal activity, the certifying official must certify and the record must establish that the qualifying criminal activity was detected, investigated, or prosecuted. Here, the certifying agency certified only embezzlement as the crime detected, investigated or prosecuted, and did not mention that it detected extortion, involuntary servitude, or trafficking when investigating the criminal activity. Accordingly, the Petitioner has not established that the certifying agency ever detected, investigated, or prosecuted the qualifying crimes of extortion, trafficking, or involuntary servitude.

On motion the Petitioner argues that we did not consider the second Supplement B that he submitted on appeal. According to 8 C.F.R. § 214.14(c)(2)(i), a U petition must contain initial evidence, including a Supplement B that was signed by a certifying official within the six months immediately preceding the U petition's filing. In this case, the Petitioner filed his U petition on April 4, 2014, while the second Supplement B submitted on appeal is signed on August 20, 2015, which is not within the six months immediately preceding the filing of his U petition. For purposes of these proceedings, we only consider the Supplement B that was submitted in conjunction with the filing of the U petition. If the Petitioner wanted USCIS to consider this second Supplement B, he should have filed a new U petition within the required time period and submitted it as initial evidence with that petition. *See* 8 C.F.R. § 214.14(c)(2)(i)(providing that a Supplement B must be signed within six months of filing the U petition).

Even if we had considered the new Supplement B submitted on appeal, it too, would have been insufficient to demonstrate that the Petitioner was the victim of any crime but embezzlement, which is not qualifying criminal activity or substantially similar to qualifying criminal activity. Like the Supplement B submitted with the U petition, this second one does not demonstrate that the certifying agency detected, investigated, or prosecuted the crimes of extortion, trafficking, or involuntary servitude when investigating the embezzlement crime perpetrated against the Petitioner.

Finally, with the motion, the Petitioner submits a statement from a former colleague addressed to the Police Department attesting to his knowledge of the embezzlement incident involving the Petitioner. The statement presents the Petitioner's colleague's observations of what happened to the Petitioner; however, as we have stated, our inquiry entails comparing the nature and elements of the statutes in question and determining whether the certifying agency detected, investigated, or prosecuted a qualifying crime. We do not review of the facts of the offense, so the Petitioner's colleague's letter does not change our finding that the Petitioner was not the victim of a crime specified at section 101(a)(15)(U)(iii) of the Act, or criminal activity substantially similar to one of the enumerated offenses.

III. CONCLUSION

On motion, the Petitioner has not overcome the ground for denial in our prior decision, as he has not established that he is a victim of qualifying criminal activity. Consequently, he has also not demonstrated his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of R-S-*, ID# 18124 (AAO Aug. 17, 2016)