U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-Z-L-

DATE: JUNE 28, 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, and we dismissed a subsequent appeal. In our prior decision, incorporated here by reference, we concluded that the Petitioner was excluded from being recognized as a victim of qualifying criminal activity because the record established his culpability for the criminal activity upon which he based his eligibility.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief. The Petitioner claims that we erred by applying the incorrect evidentiary standard to these proceedings and contends that his conviction for the certified criminal activity does not necessitate a finding that he was culpable for such activity where there is evidence to the contrary.

Upon review, we will deny the motion to reconsider.

I. APPLICABLE LAW

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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. ANALYSIS

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

In our prior decision on appeal, we determined that pursuant to 8 C.F.R. § 214.14(a)(14)(iii), the Petitioner was excluded from being recognized as a victim because the record established his culpability for the qualifying criminal activity. Specifically, the Petitioner was convicted upon a guilty plea of "Assault and Battery – Domestic Abuse" against his former spouse for the same activity upon which he asserted his eligibility for U nonimmigrant status. The record included letters from the certifying official and the Undersheriff in support of the Petitioner's claim that he pled guilty to a crime that he did not commit and was willing to assist in an investigation against his former spouse for false statements against him. In addition, the record contained a letter from the Petitioner's former spouse, contending that she was the perpetrator of the crime. Despite these claims, however, the Petitioner did not indicate that his conviction had been overturned, nor document any investigation demonstrating that he was found not culpable for the crime. Rather, the record before us conclusively established that the Petitioner pled guilty to and was convicted of that crime. We, therefore, held that despite the Petitioner's assertions and the letters from the certifying official and Undersheriff, we lacked authority to look behind his conviction for domestic abuse to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine guilt or innocence).

On motion, the Petitioner first asserts that we erred in applying the preponderance of evidence standard in determining his culpability instead of the "any credible evidence" evidentiary standard required by section 214(p)(4) of the Act and 8 C.F.R. § 214.14(c)(4). However, the Petitioner confuses the evidentiary burden with the standard of proof applicable in these proceedings. As the Petitioner properly notes, we are required to consider "any credible evidence" relevant to the petition. A petitioner must still, however, satisfy his or her burden of proof to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Moreover, under this evidentiary rule, the submission of relevant evidence may not always suffice to establish a petitioner's burden of proof by a preponderance of the evidence as we still retain sole discretion to determine what evidence is credible and the weight accorded such evidence. 8 C.F.R. § 214.14(c)(4). Thus, the "any credible evidence" rule does not require that we find the Petitioner's evidence sufficient to establish his lack of culpability for the qualifying crime where the record otherwise contains credible, probative evidence that he admitted his guilt and was ultimately convicted for the crime, unequivocally establishing his culpability.

The Petitioner next contends that his conviction for domestic violence does not necessitate a finding of culpability for purposes of the exclusion under 8 C.F.R. § 214.14(a)(14)(iii), and that we erred by not looking behind his record of conviction to consider other evidence of his innocence in determining his culpability. Specifically, he contends that the 8 C.F.R. § 214.14(a)(14)(iii) exclusion entails an inquiry into "the assessment of culpability," as distinguished from an "assessment of the existence of a conviction." Accordingly, he contends that our reliance on *Matter of Rodriguez-Carrillo* is misplaced, because the inquiry there was whether a conviction (establishing removability) existed, and that where a

conviction exists, the inquiry ends.[1] In contrast, he asserts that the inquiry here is the Petitioner's culpability, requiring that we go beyond the conviction to consider the actual underlying conduct.

A determination of culpability for a criminal offense for purposes of 8 C.F.R. § 214.14(a)(14)(iii) requires that we assess the evidence of guilt or innocence. The Petitioner correctly makes a distinction between culpability for criminal conduct and a conviction for the same. Culpability may or may not be found in the absence of a conviction for the criminal activity; however, where there is a conviction, culpability is established. In fact, under the Petitioner's own definition of the term "culpable" as "guilty or blameworthy," a conviction demonstrates culpability because it involves a specific finding of guilt by a criminal court. Here, the Petitioner actually pled guilty to and was convicted of the qualifying criminal activity of which he now claims to be a victim. As previously held, we may not "entertain a collateral attack on a judgment of conviction" in these administrative proceedings to reassess a finding of guilt, unless the judgment of conviction is void on its face. *Matter of Rodriguez-Carrillo*, 22 I&N Dec. at 1034. Although the Petitioner contends that *Matter of Rodriguez-Carrillo* is inapplicable here, he has not meaningfully distinguished the case. The Board of Immigration Appeals (Board) there specifically addressed an administrative agency's lack of authority to go behind a conviction to reassess a criminal tribunal's finding of guilt or innocence, which is exactly what the Petitioner asks that we do. Accordingly, as the Petitioner conceded his guilt and was convicted of the qualifying crime establishing his culpability, we are without authority to look behind his conviction to reassess his culpability, he is excluded from being recognized as a victim of qualifying criminal activity.

III. CONCLUSION

On motion, the Petitioner has not overcome the ground for denial, as the record establishes his culpability for the qualifying criminal activity such that he is excluded from being recognized as a victim of such activity pursuant to 8 C.F.R. § 214.14(a)(14)(iii). He, therefore, has not established that he is a victim of qualifying criminal activity and consequently, has not demonstrated the remaining eligibility criteria at section 101(a)(15)(U)(i) of the Act. Accordingly, the Petitioner is ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act.

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 M-Z-L-*, ID# 16776 (AAO June 28, 2016)

[1] The Petitioner also relies *Silva-Trevino v. Holder*, 742 F.3d 197, 200-06 (5th Cir. 2014) for this proposition. However, that case addresses the methodology used in determining whether a conviction is for a crime that constitutes a crime involving moral turpitude, and is wholly inapplicable here.