U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-Z-J-

DATE: SEPT. 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 petition, concluding that the Petitioner did not submit a properly completed Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) as required. We upheld the Director's decision and dismissed the Petitioner's subsequent appeal.

The matter is now before us on a motion to reopen and reconsider. On appeal, the Petitioner submits a brief and copies of previously submitted evidence. Upon review, we will deny the motion to reopen and reconsider.

I. LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 (USCIS) 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 (AAO 2010). A petitioner may submit any evidence for us to consider; 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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

In our previous decision, incorporated here by reference, we affirmed the Director's findings that the Petitioner did not submit a valid Supplement B with his Form I-918, Petition for U Nonimmigrant

Status (U petition), because the detective who signed the Supplement B did not qualify as a certifying official.[1] The Supplement B was signed by of the Precinct. The "Head of Certifying Agency" was listed as on the Supplement B, who was the head of the detective squad at the precinct. On appeal, the Petitioner asserted that because the did not have an official policy for certifying Supplement B forms, the Precinct" qualified as a certifying agency. She further contended that because the Precinct was the relevant certifying agency in this case, and that because by signing the Supplement B, attested to being "specifically designated by the head of the precinct] to issue" Supplement B forms, he qualified as a certifying official. The Petitioner asserted that the Supplement B was only one component of her U petition, and that United States Citizenship and Immigration Services (USCIS) should look at the totality of the circumstances.

On motion, the Petitioner again contends that the precinct detective unit is the certifying agency, not the and that therefore qualifies as a certifying official. She also reiterates that USCIS must consider the totality of the circumstances and should treat the Supplement B as only one component of her evidence of cooperation with a law enforcement agency. All the evidence in the record has been reviewed, even if it is not discussed in the decision.

III. ANALYSIS

Upon a full review of the record, the Petitioner has not overcome the ground for denial. On motion, the Petitioner repeats the same arguments she made below, but has not established that our decision was incorrect based on the evidence of record at the time of the decision, nor does she support her assertions with any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. The Petitioner also does not provide any new facts to be proven or provide any new evidence.

As stated in our previous decision, the did not have a certification or designation process at the time the Petitioner's Supplement B was signed, and under the regulation at 8 C.F.R. § 214.14(a)(2), only the head of the qualified as the certifying official. The Petitioner's contention that the precinct qualifies as the certifying agency is without merit. is divided into geographical areas called precincts. *See* Attorney's Office, (last visited Aug. 23, 2016). As the precinct" simply refers to the designation of a geographical area within the jurisdiction, it does not qualify as a "Federal, State, or local law enforcement agency." *See* § 214.14(a). Furthermore, the Supplement B itself lists the precinct as a subset of the and the police report, which the Petitioner cites to without explanation, also lists the "rep. agency" as the

[1] The Director further noted that the Petitioner did not establish the eligibility requirements regarding substantial abuse, helpfulness, possession of information, or admissibility to the United States. As stated on appeal, we will not discuss these further deficiencies in the Petitioner's U petition since she is otherwise ineligible.

Again on motion, the Petitioner also asserts that the submission of the Supplement B is sufficient evidence in and of itself to show helpfulness, and that in the alternative, we should consider all the evidence under a totality of circumstances. However, as stated in our decision on appeal, the Petitioner was required by regulation to submit a Supplement B as initial evidence that conformed to the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i). The act of filing a Supplement B that is not in conformance with the regulations is insufficient; USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Supplement B. *See* 8 C.F.R. § 214.14(c)(4). 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) (as long as regulations remain in force, they are binding on government officials). As the Petitioner has failed to provide a Supplement B that conforms to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i), she has failed to establish her eligibility for U nonimmigrant classification.

IV. CONCLUSION

On motion, the Petitioner has not overcome the ground for denial in our prior decision, as she has not complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of a properly executed Supplement B.

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 reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of J-Z-J-*, ID# 112770 (AAO Sept. 28, 2016)