U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20793635

Date: MAR. 25, 2022

Motion on Administrative Appeals Office 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). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), because the Petitioner did not include required initial evidence. We dismissed the Petitioner's subsequent appeal. He now files a motion to reopen and to reconsider. Upon review, we will dismiss the motions.

I. LAW

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. 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).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners' helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B must be signed within the six months immediately preceding the filing of the U petition. 8 C.F.R. 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

A motion to reopen must state 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 state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an

incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

The Petitioner, a citizen of Mexico, filed his U petition in June 2015. In the underlying record, the Petitioner submitted a Supplement B certified on February 20, 2015, by a major of community services in the [redacted] Police Department in [redacted] North Carolina (certifying official). According to Part 3.2 of the Supplement B, the date of the criminal act was [redacted] 2015. In February 2020, the Director issued a notice of intent to deny (NOID) stating, in relevant part, that in August 2019, the [redacted] Police Department withdrew the Supplement B issued on February 20, 2015. In the decision denying the U petition, the Director explained that the Petitioner was sent a NOID providing him notice of the withdrawal of the Supplement B, explaining the deficiencies in his initial filing, and giving him the opportunity to submit additional documentation to comply with the requirements. The Director further stated that the Petitioner did not submit a properly executed Supplement B in response to the NOID or otherwise provide evidence relating to the withdrawn Supplement B.

On appeal, the Petitioner asserted that he never refused to cooperate in the investigation of the [redacted] 2015 criminal act and the certifying agency did not provide the Petitioner with any notice or evidence, nor specific information, as to the nature of the withdrawal of the Supplement B. The Petitioner, however, included emails from April 2020 between his counsel and an official of the "U-Visa Unit" at the [redacted] Police Department, who explained that the reason for the withdrawal was that a Spanish speaking officer made attempts to contact the Petitioner regarding the crime but never heard back from him. In our decision dismissing the Petitioner's appeal, incorporated herein by reference, we acknowledged that the Petitioner submitted a Supplement B at the time of filing his U petition but explained that the record established that the Supplement B was subsequently withdrawn by the [redacted] Police Department in August 2019. We further discussed that the NOID detailed that the Supplement B had been withdrawn and the Petitioner's response to the NOID did not specifically address this fact. We explained that pursuant to statute and implementing regulations, a Supplement B certifying the Petitioner's helpfulness in the investigation or prosecution of a qualifying criminal activity perpetrated against him is required initial evidence. Because the Petitioner had not cured this deficiency, we concluded he did not meet his burden of establishing his eligibility for the benefit sought.

On motion, the Petitioner asserts that the Supplement B should not have been withdrawn, was not withdrawn, and that he did not receive proper notice of the withdrawal. He submits an "Official Response" authored by a "Police Investigation Tech – U Visa" from the [redacted] Police Department (Investigation Tech) dated September 3, 2021. He also submits subsequent emails to and from his counsel and the Investigation Tech from September 2021, within which counsel asserted that the Petitioner has been helpful. In the "Official Response," the Investigation Tech identifies the detective and representative for the police department's "U-Visa division" and USCIS's point of contact in 2019, who was also the official Petitioner's counsel was in contact with in April 2020. He states that the official was "valid in his statement[s] to USCIS regarding [the Petitioner's] lack of follow-up from the contact attempts . . . by the investigating [d]etective and interpreter" and "it must be assumed that the lack of follow-up constituted a 'withdrawal' of the [form] . . . ." The Investigation

Tech adds that the Supplement B request was received on February 19, 2015, and certified six days later. He explains that certification "happened so quickly that the case was still being investigated and the certifying official was not privy to the attempts (2) to contact [the Petitioner]" and that the police department's policies have since changed, allowing "for proper investigation of the criminal case" prior to certification of a Supplement B. The Investigation Tech also adds he is "unable" to provide another Supplement B and/or letter indicating that the Petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of qualifying criminal activity based on his review of the documentation provided. He states that from [redacted] 2015 to May 2020, when the Petitioner called to update his phone number, the police department did not have any contact with the Petitioner and has had no further contact. In the emails, the Investigation Tech adds that he "is not sure how they handled I-918s in 2015" as the individuals that would know are no longer with the police department. He then speaks to departmental procedures which include sending an "official letter" to USCIS when a Supplement B is rescinded. He also states that he can "offer his assumptions" and that "[i]f USCIS assumed that [the official] withdrew the [form], then that was an error on their part" but then reiterated that he is "unable" to provide a new Supplement B based on the record before him.

While the "Official Response" and emails were not in the underlying record or on appeal, the information contained therein does not support the Petitioner's assertions that the Supplement B was not withdrawn or withdrawn in error. On motion, the Petitioner relies on the Investigation Tech's inability to speak to prior procedures as evidence that the Supplement B was not withdrawn. However, the record on appeal established that USCIS contacted the [redacted] Police Department U visa division representative in 2019 and based on information provided by that official, issued a NOID notifying the Petitioner that the Supplement B had been withdrawn. This same official, in April 2020, explained in emails to the Petitioner's counsel the reason for the withdrawal. Nowhere in the emails does the official, who was aware of departmental procedures, state that the Supplement B was not withdrawn, was withdrawn in error, or there was a mistake in departmental procedures. The Petitioner further asserts that USCIS should not have relied on the official's representations as he was not the investigating detective or the certifying official. However, the Petitioner has provided no evidence to establish that the official's statements would not be a reliable source. Further, the record demonstrates the official was the U visa representative for the police department in 2019 and point of contact for USCIS.

The Petitioner also asserts that the agency should not have denied the U petition because the Supplement B was not withdrawn in writing or, in the alternative, he was not provided with written notice of the withdrawal and the opportunity to respond. He cites to the regulations governing revocation of an approved petition, and their reference to written notice, in support of this assertion. *See* 8 C.F.R. § 214.14 (h)(2)(A) (stating the agency may revoke an approved petition for U nonimmigrant status based on "the certifying official withdraw[ing] the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavow[ing] the contents in writing"). As a preliminary matter, the Director did not revoke an approval of the U petition and the governing regulations are not relevant to this analysis. However, the Petitioner is correct that USCIS must provide him with an opportunity to respond to or rebut derogatory information of which he is unaware before a decision is issued. *See* 8 C.F.R. § 103.2(b)(16)(i) (stating that, if a decision will be adverse to the petitioner and based on derogatory information of which he is unaware, USCIS is required to advise him of the derogatory information and provide him with an opportunity to rebut the information

before a decision is rendered). USCIS is not, however, required to provide a petitioner with an exhaustive list or documentation of the derogatory information as long as it advises him of that information and provides him with an opportunity to respond. *See, e.g., Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (explaining that 8 C.F.R. § 103.2(b)(16)(i) "does not require USCIS to provide, in painstaking detail," the derogatory evidence it finds and that a NOID provided sufficient notice and opportunity to respond to the derogatory information); *Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) (concluding that 8 C.F.R. § 103.2(b)(16)(i) requires only that the government make a petitioner "aware" of the derogatory information used against her and provide her with the opportunity to explain—"[t]he regulation . . . requires no more of the government"); *Owusu-Boakye v. Barr*, 2020 WL 6707333, at *4 (4th Cir. Nov. 16, 2020) (stating that 8 C.F.R. § 103.2(b)(16)(i) requires only that the agency disclose to the petitioner derogatory information that might be used to deny her application, "an obligation the agency satisfied when it summarized in its notices" the derogatory information and its findings that the derogatory information impacted eligibility for the benefit sought). Here, the record establishes the Director provided written notice of the withdrawal of the Supplement B's certification by the [redacted] Police Department in the NOID and gave the Petitioner the opportunity to respond before denying the petition.

The Petitioner relies on the Investigation Tech's statement that "typically" an "official letter" is sent to USCIS to mean written notice was not provided. However, it is not evident in the record that this policy was set in place when the certification was withdrawn as the Investigative Tech stated departmental procedures had changed with respect to U petitions. More importantly, this procedure of issuing an "official letter" is an internal policy of the police department, not a requirement in the regulations governing the agency's adjudication of a U petition. With respect to Petitioner's assertion that the Supplement B was withdrawn in error by the [redacted] Police Department, this internal decision by the police department is outside our scope of review. However, we note that the Investigative Tech, after reviewing counsel's statements about the Petitioner's helpfulness and the record before him, stated he was unable to provide a new Supplement B. We therefore do not conclude there was procedural or regulatory errors in the adjudication of the Petitioner's U petition.

On motion, the Petitioner has not presented new facts establishing he submitted the required initial evidence for the benefit sought, i.e., a properly executed Supplement B certifying his helpfulness in the investigation or prosecution of a qualifying criminal activity perpetrated against him pursuant to statute and implementing regulations. Further, the Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3).

III. CONCLUSION

The Petitioner, who bears the burden of proof in these proceedings, has not presented new facts sufficient to establish eligibility or demonstrated that our prior decision was incorrect based on the evidence of record at the time of the initial decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.