U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27101252

Date: JULY 19, 2023

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner, a native and citizen of Ecuador, 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) on two grounds. First, the Director concluded that the Petitioner was not the victim of qualifying criminal activity in 2008. Second, the Director concluded that the Petitioner had not established that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. See Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Although the Petitioner calls his filing a combined motion to reopen and motion to reconsider, the Petitioner submits no new facts or evidence in support of their motion to reopen. The Petitioner does not assert he establishes eligibility based on any new facts. Therefore, the Petitioner does not meet the requirements for a motion to reopen and the motion to reopen will be dismissed.

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

A petitioner seeking U nonimmigrant status must establish, in relevant part, that they were the victim of qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act or "any similar activity"

in violation of federal, state, or local criminal law. Section 101(a)(15)(U)(i)(I) of the Act. U petitioners must also establish that they have "been helpful, [are] being helpful, or [are] likely to be helpful" to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as certified on a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term "investigation or prosecution" of qualifying criminal activity includes "the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." 8 C.F.R. § 214.14(a)(5). The Petitioner submitted two Supplements B. In our decision on appeal, incorporated here by reference, we determined that the Petitioner had not established that he was the victim of felonious assault, a qualifying crime, or criminal activity similar to felonious assault, as he claimed. On motion, the Petitioner does not contest our decision that neither a felonious assault nor a crime similar to a felonious assault was detected, investigated or prosecuted.

On motion, the Petitioner solely challenges the correctness of footnote 2 of our prior decision in which we addressed an issue raised neither by the Director in his decision nor by the Petitioner on appeal. We indicated that the crime of unlawful criminal restraint, checked in Part 3 of the second Supplement B, was not detected, investigated, or prosecuted. In our previous decision, we noted that New York's penal code shows that unlawful imprisonment is the New York state equivalent of the crime of unlawful criminal restraint, criminalizing restraining another person. N.Y. Penal Law § 135.05 (2008). Restraint is defined as the intentional restriction of a person's movements without consent and by physical force or intimidation. N.Y. Penal Law § 135.00 (2008). Neither the two Supplements B, the law enforcement reports, nor court conviction documents in the case reference N.Y. Penal Law § 135.00. The court conviction document states the perpetrators pled guilty to robbery in the second degree pursuant to N.Y. Penal Law § 160.10.

As discussed on appeal, the Petitioner was involved in an incident with two individuals who took his belongings, and the perpetrators were later convicted of robbery. In support of the motion, the Petitioner relies on the statement he gave to the police saying one of the perpetrators held something appearing to be a gun and told the Petitioner and his friend not to move the during the incident of the robbery while the second perpetrator went through the Petitioner's pockets, taking his wallet, cell phone, and about $50 cash. The Petitioner argues that he "was the victim of 'unlawful imprisonment' as his movement was restrained under threat of grave risk to his life and risk of serious physical injury."

Regarding the Petitioner's arguments on motion to reconsider that he was also the victim of false imprisonment or unlawful criminal restraint, a qualifying crime for purposes of the U visa, the preponderance of the evidence does not show that law enforcement detected, investigated, or prosecuted false imprisonment against the Petitioner.

The original Supplement B did not reference any false imprisonment provision under New York law or otherwise indicate that false imprisonment was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner.

On the second Supplement B, the certifying official checked the box of "unlawful criminal restraint" on Part 3.1 . However, the certifying official only listed one crime as being investigated or prosecuted

on part 3.3, i.e., "New York State Penal Code 160.15.4 (Robbery 1)." The certifying official did not reference the crime of false imprisonment or unlawful criminal restraint as perpetrated against the Petitioner elsewhere in the second Supplement B. The certifying official described the criminal activity being investigated in part 3.5 as follows: "The victim was approached by two males, who displayed a handgun, and told him not to move. The suspects stole property from the victim."

The accompanying police report, produced shortly after the criminal activity occurred, did not reference the detection, investigation, or prosecution of false imprisonment or unlawful criminal restraint against the Petitioner. The relevant narrative of the police report states:

> Above [Victim 1] and [Victim 2] report being confronted by two unknown Black males who proceeded to display what appeared to be a handgun and forcibly steal property from victims. [Victim 1] reports theft of wallet containing NYS driver's license, set of keys, cell phone and approx. $20.00 in U.S. currency. [Victim 2, the Petitioner] reports theft of wallet, cellphone, and approx. $50.00 U.S. currency . . .

Consistent with the narrative, the police report only detected robbery pursuant to N.Y. Penal Law § 160.15 (2008) in the "incident" section of the police report as the name of the offense. Aside from the checked box at part 3.1 on the second Supplement B, the Petitioner does not provide any other evidence or legal support for his claim that the certifying official actually detected, investigated, or prosecuted the qualifying crime of false imprisonment.

Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crimes of false imprisonment or unlawful criminal restraint. Instead, the preponderance of the evidence indicates that law enforcement detected, investigated, or prosecuted robbery under N.Y. Penal Law § 160.15 (2008) (investigated) and N.Y. Penal Law § 160.10 (2008) (the statute of conviction).

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 reopen and the motion to reconsider are dismissed.