



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 20917117

Date: MAR. 7, 2022

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity at 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 Vermont Service Center Director denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition). We dismissed a subsequent appeal, upon which the Petitioner has now filed a motion to reopen and a motion to reconsider. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss both 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.

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

The Petitioner filed his U petition in August of 2015 and the Director denied the petition in June of 2020, concluding that he did not establish his admissibility to the United States. In a separate decision issued on the same day, the Director also denied the Petitioner’s corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application). We dismissed a subsequent appeal concluding that the Petitioner did not overcome the Director’s decision, as he did not contest the Director’s determinations relating to the grounds of inadmissibility. We further noted

that we do not exercise appellate jurisdiction over the waiver application. Within that dismissal, we identified the facts of this case and we incorporate them here by reference.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. New facts are those that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute “new facts.” A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The Petitioner claims three facts as new in his motion to reopen: (1) his 1997 charges for battery were dismissed; (2) the Department of Homeland Security (DHS) instituted new enforcement priorities; and (3) the Petitioner is eligible for consideration as a derivative spouse of a U-1 nonimmigrant.

As it relates to the dismissal of his battery charges, he presented this claim within the appeal brief and we acknowledge those claims but noted that he was also inadmissible on other grounds that he failed to contest. As a result, we concluded that the Petitioner did not establish that the dismissal of those battery charges would change the outcome of the Director’s decision to deny the U petition. We again incorporate our previous analysis on this issue here by reference. Regarding the change in DHS’s enforcement priorities, the Petitioner only states that it “would be unreasonable for the Director to not take this new order into account when adjudicating the discretionary element of the waiver.” The Petitioner has not explained how a discretionary matter associated with the waiver application is relevant to this decision on his U petition. Likewise, the Petitioner’s assertion that he is eligible for a new nonimmigrant classification as a derivative of his spouse’s approved U petition is not sufficient to show that he has overcome the Director’s decision.

On motion, the Petitioner does not contest the grounds of inadmissibility as identified by the Director or otherwise argue that the Director erred in finding him inadmissible to the United States. We have no jurisdiction over the Director’s discretionary denial of the waiver application. For the reasons discussed above, the facts and documentation submitted on motion do not overcome our original decision on the Petitioner’s appeal.

C. Motion to Reconsider

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and (3) 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). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The Petitioner’s claimed basis in the motion to reconsider is that the Director did not adjudicate the applications fairly. He advances due process claims under the U.S. Constitution relating to the

Director's decision and contends that the Director was in a rush to transfer the file to this office after he filed the appeal. Ultimately, the Petitioner claims that he was prejudiced by the Director's decision and actions because they directed him on a mistaken appeal path, and it interfered with his post-denial options.

Generally, a foreign national's due process rights are provided by Congress under the Act and implemented within the regulations. Recently, the Supreme Court quoted precedent standing for more than seven decades, and in doing so reiterated the important rule that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1982 (2020) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950) and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)). Additionally, in *Thuraissigiam* the Supreme Court referred to *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) for the finding that "[t]his Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative."

Turning to the claimed errors the Petitioner identifies, the issues he must first overcome within this motion are limited to the issues discussed within this office's most recent decision—the decision on the appeal—and not the issues that may be attributable to the Director. Here, the Petitioner did not file a motion on the Director's decision. Rather, he filed a motion to reconsider our August of 2021 appeal dismissal and we will only address arguments and evidence relating to the grounds underlying that decision. As we noted above, the errors the Petitioner raises in this motion to reconsider were allegedly committed within the Director's decision and not in our decision on the appeal. The Petitioner has not identified any errors attributable to our decision on the appeal.

As the Petitioner did not demonstrate that we incorrectly dismissed his appeal, he has not established that he meets the requirements of a motion to reconsider. Therefore, we will dismiss that motion.

III. CONCLUSION

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.