U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29322439

Date: NOV. 20, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident based on her "U" nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m).

The Director of the Vermont Service Center denied the application, concluding that the record did not establish that she held U nonimmigrant status at the time of filing her Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), as her U nonimmigrant status had been revoked. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, she has been physically present in the United States for a continuous period of three years since the date of her admission as a U nonimmigrant and her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further state that an applicant is not eligible for adjustment of status if the applicant's U nonimmigrant status has been revoked pursuant to 8 § CFR 214.14(h). 8 C.F.R. § 245.24(c).

The Applicant originally received U-5 nonimmigrant status as the sibling of a U-1 nonimmigrant visa recipient in April 2014. In August 2018, the Applicant was notified of the Director's intention to revoke the approval of the Form I-918, Supplement A, Petition for Qualifying Family Member of a U-1 Recipient (U derivative petition), as the Director determined that the Principal Petitioner, the Applicant's brother, was over 21 years of age at the time he filed his Form I-918, Petition for U Nonimmigrant Status (U principal petition). *See* 8 C.F.R. § 214.14(10) which defines qualifying family members and explains that a noncitizen victim of criminal activity under the age of 21 may include their unmarried siblings under the age of 18 as qualifying family members. *See also* 8 C.F.R. § 214.14(h)(2)(i) explaining that approval of a U derivative petition may be revoked if the

approval of the petition was in error. Ultimately, the Director revoked the approval of the U derivative petition in June 2019, while the Applicant's U adjustment application was pending, as the Principal Petitioner did not establish that he was under 21 years of age at the time of filing his U principal petition. As a result, the Director denied the Applicant's U adjustment application, concluding that, as her U nonimmigrant status was revoked, she was not eligible to adjust status to that of a permanent resident based on such status.

On appeal, the Applicant submits a brief, a personal statement, evidence in support of her character and country conditions in Mexico. In her brief, she discusses relief for "violations of regulations" and "procedural errors" and contends that as multiple applications and petitions were approved based upon the approval of the U derivative petition, USCIS violated its own regulations, and the actions should be set aside to reinstate the Applicant's U nonimmigrant status. The Applicant further asserts that the Director's revocation of her U nonimmigrant status prejudiced her, as she had held U nonimmigrant status for five years at the time of the revocation, and she was subsequently unable to obtain another nonimmigrant status, such as Deferred Action for Childhood Arrivals. The Applicant, in her brief and evidence provided on appeal, does not contend that the Director's decision denying her U adjustment application was in error, and only addresses the revocation of her U nonimmigrant status.

However, the only issue before us is whether the Applicant is eligible for adjustment of status, and not whether the Director's revocation of her U nonimmigrant status was proper.[1] The record reflects that the Applicant's U nonimmigrant status was revoked pursuant to 8 § CFR 214.14(h) and her U nonimmigrant status has not been reinstated. As such, she is ineligible to adjust status to that of a permanent resident.

ORDER: The appeal is dismissed.

[1] The record reflects that the Applicant filed an appeal of the Director's revocation of her U nonimmigrant status, which we rejected as untimely filed in January 2020. The Applicant does not contend that our rejection was in error. Upon additional review, that appeal should also have been rejected as the appeal was filed by the Applicant, who was the derivative beneficiary of the U derivative petition, and was not filed by her brother, the principal petitioner and U-1 recipient. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) and (a)(2)(i), explaining that only an affected party may appeal an unfavorable decision.