U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26663905

Date: DECEMBER 1, 2023

Appeal of Vermont Service Center Decision

Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient

The Petitioner seeks U nonimmigrant classification on behalf of the Derivative, her sibling, as a qualifying family member of an individual granted U-1 status. See section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(ii). The Director of the Vermont Service Center denied the Form I-918 Supplement A, Petition for Qualifying Family Member of a U-1 Recipient (U derivative petition), concluding that the Derivative did not meet the definition of qualifying family member because she was 19 years old when the Form I-918, Petition for U Nonimmigrant Status (U petition), was filed. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). 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.

The Act and implementing regulations provide, in pertinent part, that an unmarried sibling under 18 years of age on the date on which the U-1 nonimmigrant (under 21 years of age) applied for such status, and who is admissible to the United States, may be eligible for derivative U nonimmigrant classification as a qualifying family member of the U-1 nonimmigrant. Section 101 (a)(15)(U)(ii)(I) of Act; see also 8 C.F.R. § 214.14(a)(10), (f)(l) (defining "qualifying family member" and explaining eligibility requirements). The implementing regulations specify that, to establish eligibility, the qualifying family relationship between the U-1 nonimmigrant and qualifying family member must have existed at the time of the filing of the U-1 principal's U petition, and continue to exist at the time U derivative petition is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States. 8 C.F.R. § 214.14(f)(4).

In the present case, the Derivative, born on [redacted] 1997, was 19 years old when the Petitioner filed her U petition on June 2, 2016. Because the Derivative was not under 18 years of age on the date the Petitioner applied for U nonimmigrant status, the Director concluded that the Derivative did not meet the definition of a qualifying family member as defined by the Act. On appeal, the Petitioner asserts that denial of the U derivative petition would cause extreme and unusual hardship to the Derivative, and her two U.S. citizen children, and requests that we exercise favorable discretion and vacate the Director's decision.

As noted above, section 10l(a)(l5)(U)(ii)(I) of Act requires the Derivative to be an unmarried sibling under 18 years of age on the date on which the U-1 nonimmigrant (under 21 years of age) applied for such status. In this case, because the Derivative was over 18 years of age, the qualifying family relationship between the Derivative and the Petitioner did not exist when the U petition was filed, as 8 C.F.R. § 214.14(f)(4) requires. We recognize the humanitarian claims made on appeal and the hardship to the Derivative that this result may cause, however 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) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials). Therefore, the Derivative is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.