U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25516656

Date: MAR. 15, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, who was granted "U-1" nonimmigrant classification for herself, also seeks U nonimmigrant classification of the Derivative, her son, as a qualifying family member of a person granted U-1 status. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii) (discussing eligibility requirements for derivative status for spouse, child, parent, and sibling).

The Director of the Nebraska Service Center denied the Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Nonimmigrant (U derivative petition), and a subsequent motion to reopen, concluding that the Petitioner had not established that the Derivative was a qualifying family member at the time of filing. We dismissed a subsequent appeal and a joint motion to reopen and motion to reconsider. This matter is now before us on a second motion to reopen and reconsider. On motion, the Petitioner submits a brief, a copy of the Derivative's birth certificate and asserts that the Derivative was a qualifying family member at the time of filing. Upon review, we will dismiss the motion.

A motion to reopen must state new facts 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 and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

Section 101(a)(15)(U) of the Act provides U nonimmigrant classification to victims of certain criminal activity (U principals) and their qualifying family members (U derivatives). *See* Section 101(a)(15)(U)(ii)(II) of the Act (providing that, in the case of U principals over the age of 21—as here—qualifying family members include the U principal's "spouse and children"); 8 C.F.R. § 214.14(a)(10) (same).

The term "child" is defined as "an unmarried person under [21] years of age." Section 101(b)(1) of the Act. However, the Act allows for limited age protections for U derivatives, most relevantly providing that:

> An unmarried [derivative] who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(U)(i), and who was under 21 years of age on the date which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii), if the [derivative] attains 21 years of age after such parent's petition was filed but while it was still pending.

Section 214(p)(7)(A) of the Act, 8 U.S.C. § 1184(p)(7)(A).[1] 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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). A petitioner may submit any credible, relevant evidence for us to consider in our de novo review; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.14(c)(4).

In our prior decision, incorporated here by reference, we determined that the U derivative petition was received by USCIS on [redacted] 2015, at 1:36 pm.[2] However, because the Derivative was born on [redacted] 1994, and regardless of the time of his birth, he was not under 21 years old at the time of filing, as required. The Petitioner argues that the Derivative was born on [redacted] 1994, at 24:00 hours (24 hundred hours) at midnight, and that being born at midnight creates a unique situation. Consequently, the Petitioner claims that the Derivative was not yet 21 years old at the *time* the petition was filed. A review of the Derivative's birth certificate confirms he was born on [redacted] 1994, at 24:00 hours. The Petitioner further states, ". . . [i]f you are born at midnight, your date of birth is the next day." The Petitioner also suggests that if the Derivative was born the next day, the petition was received before the Derivative turned 21 years old. But this argument is unavailing because the birth certificate reflects that the Derivative was born on [redacted] as the Petitioner now suggests.

Alternatively, the Petitioner argues that a day ends at 11:59:59 pm and that on the 24-hour clock system (military time) the day begins at 00:00 (zero hundred hours).[3] However, we note, in military time, the day ends at 24:00, not at 11:59:59 pm. Therefore, because the Derivative was born on [redacted] albeit at the end of the day, the Petitioner has still not established the Derivative's eligibility as a qualifying family member at the time of filing because he turned 21 years of age on [redacted] 2015. Neither the Act nor the regulations indicate that a day is a divisible unit or period of time when determining whether a Derivative is a child under the Act and eligible for qualifying family member classification. And, absent an indication that Congress intended them to be read otherwise, we are expected to give the words of a statute their "ordinary, contemporary, common meaning." *Williams v. Taylor*, 529 U.S. 420, 431 (2000).

---

[1] Accordingly, a U derivative who was unmarried and under the age of 21 on the date that the U principal's underlying petition was filed will not "age out"—or be deemed ineligible for U nonimmigrant classification based solely on age—if he or she turns 21 during the adjudication process.

[2] We previously noted that the Director erroneously concluded that the receipt date was [redacted] 2015.

[3] The Petitioner also states, perhaps due to Scrivener's error, that ". . . the end of each day is 24:00," and this supports our determination.

The language of the statute provides that, when determining the "age" of a U derivative, we look to the "the *date* on which [the U principal] petitioned for [his or her] status." Section 214(p)(7)(A) of the Act (emphasis added). If the U derivative was "*under* 21 years of age on [such] *date*," he or she continues to be classified as a child for purposes of U classification. *Id.*; *see also* section 101(b)(1) of the Act (defining "child" as "an unmarried person under [21] years of age."). The underlying U principal petition[4] was not filed prior to [redacted] 2015, and because [redacted] 2015, was the date upon which the Derivative turned 21 years of age, the Derivative cannot be considered "under the age" of 21 as required by the statute on that date. Hence, the Derivative was not a "child" on the date of filing and, as a result, does not meet the definition of a qualifying family member for U nonimmigrant classification.

All petitioners for immigration benefits must establish their eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). Although we acknowledge the hardships this may cause, we lack the 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) (explaining that as long as regulations remain in force, they are binding on government officials).

The Petitioner has not demonstrated, as required, that the Derivative was a qualifying family member at the time the principal U petition and Supplement A were filed. In conclusion, the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] Form I-918, Petition for U Nonimmigrant Status.