



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 27 2007

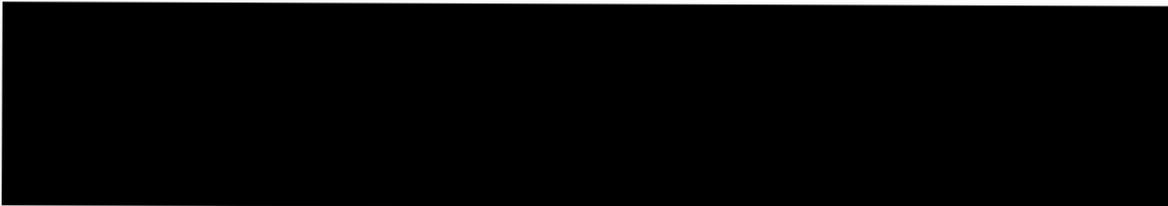
IN RE:

Applicant:
Derivative:



APPLICATION: Application for Immediate Family Member of T-1 Recipient under sections 101(a)(15)(T)(i) and 214(o) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(T)(i) and 1214(o), and the regulation at 8 C.F.R. § 214.11(o).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for T-2 nonimmigrant status was denied by the Center Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On November 7, 2005, the applicant submitted a Form I-914, Supplement A, on which he indicated that he has an application for T status pending with Citizenship and Immigration Services (CIS). The applicant seeks to have his daughter classified as a T-3 nonimmigrant child in order that she may follow to join him in the United States, pursuant to sections 101(a)(15)(T)(i) and 214(o) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(T)(i) and 1214(o), and the regulation at 8 C.F.R. § 214.11(o).

The center director denied the application, finding that the applicant's daughter is ineligible for T-3 status as a derivative child, as she no longer meets the definition of child found in section 101(b)(1) of the Act.

On appeal, counsel for the applicant concedes that the applicant's daughter has reached age 21. *Brief in Support of Appeal*, submitted May 11, 2006. Counsel describes the conditions and challenges that led to the applicant seeking T status, and she requests that the present application for T-3 derivative status be approved for humanitarian purposes. *Statement from Counsel on Form I-290B*, dated May 8, 2006.

The regulation at 8 C.F.R. § 214.11(o) provides the following:

Admission of the T-1 applicant's immediate family members – (1) Eligibility. Subject to [former] section 214(n) of the Act, an alien who has applied for or been granted T-1 nonimmigrant status may apply for admission of an immediate family member, who is otherwise admissible to the United States, in a T-2 (spouse) or T-3 (child) derivative status (and, in the case of a T-1 principal applicant who is a child, a T-4 (parent) derivative status), if accompanying or following to join the principal alien

The regulation at 8 C.F.R. § 214.11(a), which defines terms as used in the law pertaining to T visas, states that “*Immediate family member* means the spouse or child of a victim of a severe form of trafficking in persons” The regulation at 8 C.F.R. § 214.11(a) further provides that “*Child* means a person described as such in section 101(b)(1) of the Act.”

Section 101(b)(1) of the Act states that “[t]he term ‘child’ means an unmarried person under twenty-one years of age”

Section 214(o)(4) of the Act states the following:

(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(T)(i) , and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(T)(ii), if the alien attains 21 years of age after such parent's application was filed but while it was pending.

CIS records show that the applicant applied for T-1 status on November 7, 2005. The applicant's daughter was born on September 8, 1984, thus she reached 21 years of age on September 8, 2005, approximately two months prior to the date that the applicant applied for T-1 status. Pursuant to the regulations at 8 C.F.R. §§

214.11(a) and (o) and sections 101(b)(1) and 214(o)(4) of the Act, the applicant's daughter is not eligible for T-3 derivative status, as she was no longer a "child" or "immediate family member" as of the date that the applicant filed his Form I-914 application for T-1 status. Specifically, the applicant's daughter had reached age 21 as of the date that the applicant filed his application for T-1 status. Section 214(o)(4) of the Act. The Act and the regulations do not afford CIS discretion to approve an application for T-3 status where the principal applicant's daughter reached age 21 prior to the date that the applicant filed his application for T-1 status. Based on the foregoing, the application may not be approved.

In proceedings regarding an application for T nonimmigrant status under section 101(a)(15)(T)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.