



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 13 2013** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]
Derivative: [REDACTED]

APPLICATION: Application for Immediate Family Member of a T Nonimmigrant Under Section 101(a)(15)(T)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(ii).

ON BEHALF OF APPLICANT:

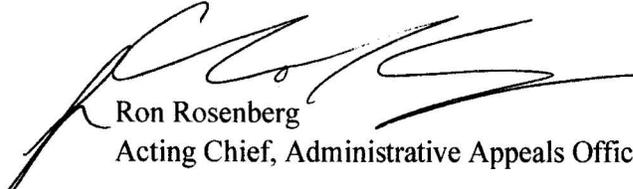
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) approved the applicant's Application for T Nonimmigrant Status (Form I-914) but denied the Application for Immediate Family Member of T-1 Recipient (Form I-914 Supplement A) submitted on behalf of his daughter. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-914 Supplement A will remain denied.

The applicant seeks nonimmigrant classification of his daughter under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(T)(ii), as an immediate family member of a T-1 nonimmigrant.

Applicable Law

Section 101(a)(15)(T)(i) of the Act provides for T nonimmigrant classification to alien victims of severe forms of trafficking in persons. Section 101(a)(15)(T) of the Act provides derivative T nonimmigrant classification for immediate family members defined as, in pertinent part:

- (ii) if accompanying, or following to join, the alien described in clause (i) –

* * *

(II) In the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien[.]

See also 8 C.F.R. § 214.11(a) (defining an immediate family member, in part, as the spouse or child of an adult T nonimmigrant). The regulation at 8 C.F.R. § 214.11(a) defines the term *child* as “a person described as such in section 101(b)(1) of the Act.” Section 101(b)(1) of the Act provides that the term *child* means, in pertinent part, “an unmarried person under twenty-one years of age.”

To be eligible for derivative T status as an immediate relative, “the relationship [between the T-1 principal nonimmigrant and the immediate family member] must exist at the time the application for the T-1 nonimmigrant status was filed, and must continue to exist at the time of the application for . . . T-3 [child] . . . status and at the time of the immediate family member's subsequent admission to the United States.” 8 C.F.R. § 214.11(o)(4).

Facts and Procedural History

In February 2011, the applicant filed a Form I-914 that U.S. Citizenship and Immigration Services (USCIS) approved on June 10, 2011, granting him T-1 nonimmigrant status from June 6, 2011 until June 6, 2015. The applicant's daughter, who was born on November 2, 1988, was 22 years old when the applicant filed his Form I-914.

The applicant filed the instant Form I-914 Supplement A on his daughter's behalf on January 17, 2012, when she was 23 years old. The director denied the Form I-918 Supplement A because the applicant's daughter did not meet the definition of a child at section 101(b)(1) of the Act when the Forms I-914 and I-914 Supplement A were filed.

On appeal, the applicant asks USCIS to take into consideration his concerns for his daughter's safety instead of focusing on her age as a determinative factor. The applicant states further that when he reported his victimization to law enforcement authorities in April 2008, his daughter was only 19 years old, and that he was unable to submit his Form I-914 until February 2011 due to his lack of knowledge about the process to apply for T nonimmigrant status as well as his limited English language skills.

Analysis

The AAO reviews these proceedings de novo. 8 C.F.R. §§ 214.11(l)(1), (o)(8). De novo review of the record as supplemented on appeal reveals no error by the director in denying the Form I-914 Supplement A.

The regulation at 8 C.F.R. 214.11(o)(4) requires the relationship between the applicant and the immediate family member to have existed at the time the Form I-914 was filed, and continuing through the adjudication of the Form I-914 Supplement A and the immediate family member's subsequent admission to the United States. Here, when the applicant submitted his Form I-914 to USCIS in February 2011, the required parent/child relationship no longer existed because his daughter was already over the age of 21 and not a child as defined at section 101(b)(1) of the Act. While the applicant's concerns for his daughter's safety and well-being are understandable, the AAO has no discretion to waive the statutory and regulatory requirements that govern which immediate family members may derive T nonimmigrant status from a principal T-1 nonimmigrant.

Conclusion

In these proceedings, the burden of proving the beneficiary's eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(o)(8). Here, that burden has not been met as to the applicant's daughter's eligibility for T-3 nonimmigrant status as an immediate family member.

ORDER: The appeal is dismissed. The Form I-914 Supplement A remains denied.