

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

PUBLIC COPY

D14

[Redacted]

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: NOV 15 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Qualifying Family Member of U-1 Recipient Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

ON BEHALF OF PETITIONER:
[Redacted]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, approved the petitioner's U nonimmigrant visa petition (Form I-918), but denied the Petition for Qualifying Family Member of U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her brother. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification for her brother under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U-1 recipient.

The director determined that the petitioner's brother was inadmissible and did not warrant a waiver of inadmissibility. Accordingly, the director denied the beneficiary's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) and the Form I-918 Supplement A. On appeal, the petitioner contends through counsel that because the denial of her brother's Form I-192 was an abuse of discretion, the denial of the petitioner's Form I-918 Supplement A also was an abuse of discretion.

Applicable Law

Section 101(a)(15)(U)(ii) of the Act permits certain qualifying family members who are accompanying or following to join the alien victim of a qualifying crime to obtain derivative U nonimmigrant classification. Specifically, an individual who has petitioned for or has been granted U-1 nonimmigrant status as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act

may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. . . . To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:

- (i) The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and
- (ii) The qualifying family member is admissible to the United States.

8 C.F.R. § 214.14(f)(1). In the case of an alien victim of a qualifying crime who is under 21 years of age, qualifying family members are defined as the spouse, children, parents, and unmarried siblings under the age of 18 of such alien. Section 101(a)(15)(U)(ii)(I) of the Act; 8 C.F.R. § 214.14(a)(10).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4), (f)(5). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be

considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The record reflects that the petitioner is a 15-year-old native and citizen of Mexico. The beneficiary is the 17-year-old brother of the petitioner. On September 2, 2008, the petitioner filed a Form I-918 Supplement A on behalf of her brother. On February 26, 2009, a juvenile court in Oregon determined that the beneficiary was within the jurisdiction of the court for offenses involving sodomy and sexual abuse against a minor, and placed the beneficiary on probation subject to various conditions.

U.S. Citizenship and Immigration Services (USCIS) granted U nonimmigrant classification to the petitioner on March 9, 2009. On March 10, 2009, USCIS issued a request for evidence to provide the beneficiary with an opportunity to submit, among other things, a Form I-192 to request a waiver of inadmissibility. The beneficiary submitted a Form I-192 and other responsive documents on May 26, 2009. On February 10, 2010, USCIS issued a Notice of Intent to Deny the beneficiary's Form I-192, indicating that the evidence in the record did not support a discretionary grant of a waiver of inadmissibility. The beneficiary submitted responsive evidence, which the director found insufficient to overcome the basis for denial. On June 10, 2010, the director denied the beneficiary's Form I-192 and the petitioner's Form I-918 Supplement A. The petitioner timely appealed.

Analysis

Because the petitioner is an alien victim of a qualifying crime who is under 21 years of age, her 17-year-old, unmarried brother meets the definition of a qualifying family member. *See* section 101(a)(15)(U)(ii)(I) of the Act; 8 C.F.R. § 214.14(a)(10).

However, a qualifying family member also must establish that he is admissible to the United States. *See* 8 C.F.R. § 214.14(f)(1)(ii). Here, the director determined that the beneficiary was inadmissible to the United States under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), for being an alien present in the United States without permission or parole. The record reflects that the beneficiary is inadmissible to the United States under section 212(a)(6)(A)(i) of the Act because he entered the United States without admission or parole on or about December 18, 2002, and has made no departures from the United States since that time. *See Form I-918 Supplement A; Form I-192*. The petitioner does not contest the beneficiary's inadmissibility on appeal. *See Brief on Appeal* at 1; *Form I-192*.

To be eligible for derivative U nonimmigrant classification, a qualifying family member who is inadmissible to the United States must be granted a waiver of any grounds of inadmissibility in accordance with the regulation at 8 C.F.R. § 212.17. *See* 8 C.F.R. § 214.14(f)(1)(ii), (f)(3)(ii). In this case, the director determined that the beneficiary did not establish that he warranted a favorable exercise of discretion to waive his inadmissibility. The AAO has no jurisdiction to review the denial



Page 4

of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). Accordingly, the beneficiary is not eligible for U nonimmigrant classification, and the appeal will be dismissed.

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4), (f)(5). Here, the petitioner has not met her burden of establishing that her brother qualifies for U nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act and the applicable regulations. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.