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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

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

NOV 19 2010

IN RE:

[Redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner is a citizen of the United States and therefore ineligible to hold nonimmigrant visa status. On appeal, counsel submits a brief reasserting the petitioner's eligibility, and additional evidence.

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that –

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

* * *

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p) prescribes, in pertinent part, the following:

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

The regulation at 8 C.F.R. § 214.14(c)(4) prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS [U.S. Citizenship and Immigration Services]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Guidelines regarding the admission of qualifying family members are contained at 8 C.F.R. § 214.14(f) which states, in pertinent part, the following:

Admission of qualifying family members—

- (1) *Eligibility.* An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) 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. . . .

The petitioner is an eight-year-old citizen of the United States. She filed the instant Form I-918 on October 28, 2008. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's responses to the requests for additional evidence, the director denied the petition on February 25, 2010.¹ Counsel filed a timely appeal from the denial of the Form I-918 on March 22, 2010.

¹ The petitioner filed two Forms I-918, Supplement A: one on behalf of her father and one on behalf of her mother. The director denied both petitions on February 26, 2010).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

The sole issue before the AAO on appeal is whether the petitioner, as a citizen of the United States, is eligible for U nonimmigrant status. We agree with the director's determination that she is not. The petitioner has failed to establish that she is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, which pertains only to "an alien." *See also* 8 C.F.R. § 214.14(b) (stating that "[a]n alien is eligible for U-1 nonimmigrant status" if she or he meets all the requirements). Section 101(a)(3) of the Act defines the term "alien" as "any person not a citizen or national of the United States." As the petitioner is a citizen of the United States, she is not an alien and is therefore ineligible to hold U nonimmigrant status.

On appeal, counsel acknowledges that, as a citizen of the United States, the petitioner is ineligible for U nonimmigrant status, and states that the petition "was not intended to result in [her] classification as a U-1 nonimmigrant," but was filed with the intention of obtaining U-4 nonimmigrant status on behalf of her parents. However, as set forth at 8 C.F.R. § 214.14(f)(1), U-4 nonimmigrant status is reserved for a parent of a U-1 nonimmigrant who is a child under 21 years of age. Because the petitioner is not eligible to be a U-1 nonimmigrant, her parents are not eligible for derivative U-4 nonimmigrant status.

Counsel's arguments on appeal regarding "policy considerations" are improperly before the AAO, as we lack authority to waive the requirements of the statute and the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). As the director noted when denying U-4 nonimmigrant status to the petitioner's parents, denial of the petitioner's Form I-918 does not preclude them from filing their own Forms I-918 as principal petitioners. However, as set forth above, the petitioner is ineligible for U nonimmigrant status because she is a citizen of the United States and the director properly denied this petition.

As the petitioner's status as a citizen of the United States renders her ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act, she has not overcome the director's ground for denial of the petition. The petitioner, therefore, must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.