

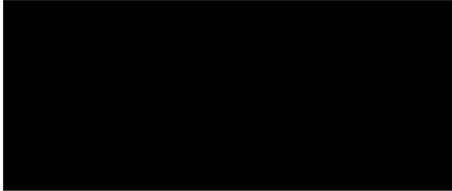
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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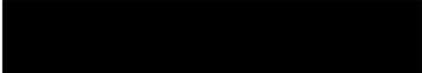


**U.S. Citizenship
and Immigration
Services**



D14

FILE:  Office: VERMONT SERVICE CENTER Date: JAN 10 2011

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for U Nonimmigrant Classification for a Qualifying Family Member of a 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)

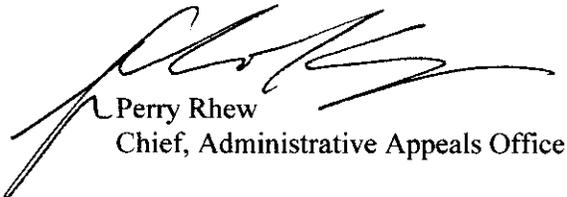
ON BEHALF OF PETITIONER:



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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, approved the petitioner's U nonimmigrant status petition (Form I-918) but denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her child. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner seeks nonimmigrant classification of her child 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 nonimmigrant.

The director denied the Form I-918 Supplement A because the petitioner failed to submit a copy of the beneficiary's valid passport, Border Crossing Card, or a Form I-192 waiver application and, therefore, the beneficiary's admissibility to the United States was not established. On appeal, prior counsel indicates that she sent the requested documents to the director in response to his October 20, 2009 Request for Evidence (RFE).

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 . . . possesses information concerning criminal activity described in clause (iii);
- (III) 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;

(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[.]

The regulation at 8 C.F.R. § 214.14(a)(10) defines a qualifying family member as, in pertinent part:

in the case of an alien victim 21 years of age or older . . . the spouse or child(ren) of such alien

Regarding the admission of a qualifying family member, the regulation at 8 C.F.R. § 214.14(f)(1) states, in pertinent part:

To be eligible for . . . U-3 [(child)] . . . nonimmigrant status, it must be demonstrated that:

- (i) The alien for whom . . . U-3 . . . 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.

The record in this case provides the following pertinent facts and procedural history. On September 10, 2008, the petitioner filed a Form I-918, Petition for U Nonimmigrant Status, and on the same day she filed a Form I-918 Supplement A on behalf of her child, the beneficiary. When filing the Form I-918 Supplement A, the petitioner indicated that the beneficiary was presently living in the United States and had most recently entered on June 26, 2002 in B-2 nonimmigrant status.¹ The petitioner submitted a copy of the beneficiary's Form I-94, Arrival and Departure Record, which showed that the beneficiary was admitted to the United States on June 26, 2002 in B-2 status, with authorization to remain until December 25, 2002.

The petitioner was granted U-1 nonimmigrant status on or about September 25, 2009. On October 20, 2009, the director issued an RFE to obtain, in pertinent part, "a copy of the personal data page of [the beneficiary]'s valid passport, which includes his photograph and biographical information." The director informed the petitioner that if the beneficiary did not have a passport, she could submit a copy of the beneficiary's valid Border Crossing Card or, if the beneficiary did not possess either document, she could submit a Form I-192 waiver application on his behalf. The petitioner, through prior counsel, responded to the RFE on January 14, 2010, and included a copy of the beneficiary's U.S. nonimmigrant B-1/B-2 visa that was issued on September 10, 1998 at the U.S. Consulate in Santo Domingo. In her January 13, 2010 cover letter that was submitted along with the RFE response, prior counsel referred to the beneficiary's U.S. nonimmigrant visa as "the personal data page of [the beneficiary's] passport."²

In his denial decision, the director stated that he informed the petitioner in the RFE that the beneficiary appeared to be inadmissible under sections 212(a)(6)(A)(i) and (a)(7)(A)(i)(I) of the Act

¹ The petitioner also indicated on the form that the beneficiary entered the United States sometime in April 1999 and that he left the United States in May 1999.

² In an October 20, 2010 letter that was written to notify USCIS of the change in the petitioner's representation, the petitioner's current representative noted that the beneficiary remains outside of the United States.

and that he had requested that the beneficiary file a Form I-192 waiver application. The director acknowledged that the beneficiary made a legal entry into the United States in B-2 status but concluded that because the beneficiary did not submit a copy of his valid passport or Border Crossing Card, and did not file a Form I-192 waiver application, he was not admissible to the United States. On appeal, prior counsel states that the documents requested in the October 2009 RFE were submitted and timely received, and resubmits copies of the documents that were submitted with the RFE response.

We first withdraw the director's assertion in the denial letter that he had previously informed the petitioner that the beneficiary was inadmissible to the United States pursuant to sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Act. In his October 2009 RFE, the director never notified the petitioner that the beneficiary appeared to be inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I), or any other specific ground(s) of inadmissibility under the Act. Furthermore, the evidence in the record establishes that the beneficiary was admitted into the United States as a B-2 nonimmigrant in June 2002. Although he remained in the United States beyond his period of authorized stay, he was not inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Act prior to his departure from the United States.³

It appears that the director found the beneficiary inadmissible under section 212(a)(7)(B) of the Act because the petitioner failed to submit a copy of the beneficiary's valid passport or Border Crossing Card. The director did not, however, cite this inadmissibility ground in his decision. The director also erred in failing to note that a U nonimmigrant may seek a waiver of the passport requirements under section 212(d)(4)(A) of the Act pursuant to the regulations at 8 C.F.R. § 212.1(g) and (p), by filing a Form I-193, Application for Waiver of Passport and/or Visa. *See* U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 179, 53030 (Sept. 17, 2007) (explaining amendment to 8 C.F.R. § 212.1(p)). Thus, the director's October 20, 2009 RFE and June 23, 2010 denial notice were legally insufficient, as he should have requested that the petitioner submit a Form I-913 waiver application instead of a Form I-192 waiver application if she could not present evidence of the beneficiary's valid passport or Border Crossing Card. In addition, because the denial notice did not state the specific ground of inadmissibility, the petitioner was not provided with sufficient basis to make a meaningful appeal. The regulation at 8 C.F.R. § 103.3(a)(1)(i) requires that the director "explain in writing the specific reasons for denial." Accordingly, we withdraw the director's decision to deny the petition.

As the evidence in the record indicates that the beneficiary departed from and remains outside of the United States, it is unclear whether he may still require a Form I-193 waiver application at this time. Therefore, upon remand of this matter, the director should issue a new RFE to the petitioner seeking a copy of the beneficiary's passport or Border Crossing Card and notifying her that, if the beneficiary does not possess either of these documents, the submission of Form I-193 waiver application is

³ The beneficiary's departure from the United States did not trigger his inadmissibility under section 212(a)(9)(B) of the Act because his was under the age of 18 while residing in the United States. Section 212(a)(9)(B)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(I).

required. Only after the petitioner has responded or the allotted time for a response has expired, shall the director enter a new decision into the record, which if adverse to the petitioner, shall be certified to the AAO for review. As always 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).

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.