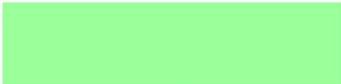




U.S. Citizenship
and Immigration
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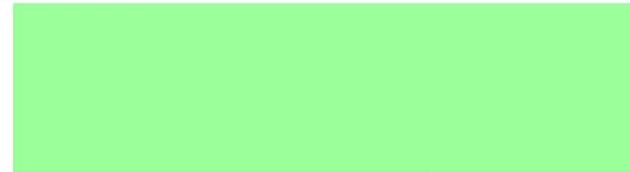


Date: **DEC 11 2013** Office: VERMONT SERVICE CENTER FILE: 

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:

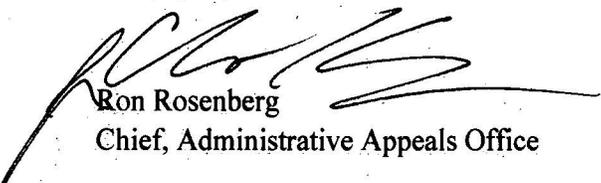


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), 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 daughter. The Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification of her daughter 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 petition on April 11, 2011, because although the beneficiary met the criteria for U-3 nonimmigrant status as a qualifying family member of the petitioner, she is inadmissible to the United States and her Form I-192, Advance Permission to Enter as a Nonimmigrant was denied. The appeal, filed May 16, 2011, was summarily dismissed because the AAO had received no brief or evidence asserting any error in the director's decision. On motion, counsel submits a brief and additional evidence.¹

Counsel's submission meets the requirements for a motion to reopen and reconsider at 8 C.F.R. § 103.5(a). Counsel submits new evidence, states new facts to be proved in the reopened proceedings, and states the reasons for reconsideration. The motion is granted.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U-1 nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 101(a)(15)(U)(ii) allows certain family members to also be accorded U nonimmigrant status based upon their qualifying relationship to the U-1 nonimmigrant. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 Supplement A, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

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

(1) *Eligibility.* . . . 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

¹ The evidence on motion shows that counsel timely filed a brief and additional evidence on appeal, but that she sent the documents to the Vermont Service Center rather than to the AAO directly.

(ii) The qualifying family member is admissible to the United States.

For qualifying members who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii) require the filing of an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 Supplement A in order to waive any ground of inadmissibility. There is no appeal of a decision to deny a waiver. 8 C.F.R. §212.17(b)(3).

Facts and Procedural History

On January 26, 2007, the beneficiary was granted U visa interim relief. On April 11, 2008, the petitioner filed a Form I-918 Supplement A seeking U-3 nonimmigrant status on her daughter's behalf. The beneficiary filed a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, on February 16, 2010, which was subsequently denied. The beneficiary filed a motion to reopen along with another Form I-192 on September 20, 2010. On April 11, 2011, the director denied the Form I-918 Supplement A petition and the beneficiary's second Form I-192, finding that the beneficiary was inadmissible to the United States under sections 212(a)(6)(A)(i) (alien present without admission), 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), and 212(a)(9)(B) (unlawful presence in the United States) of the Act, and did not merit the Secretary's discretion in the form of a waiver. On May 16, 2011, counsel filed a motion to reopen and reconsider the director's denial of the Form I-192, which was dismissed on August 13, 2012.²

The AAO summarily dismissed the petitioner's subsequent appeal for failure to file a brief or supporting evidence in a decision dated March 9, 2013. On motion, counsel provides evidence that a brief and additional evidence were timely filed.

Analysis

On motion, counsel does not contest that the beneficiary is inadmissible. Rather, in her brief, counsel asserts that due process demands that the Form I-918 Supplement A filed on behalf of the beneficiary be held in abeyance until her pending Motion to Reopen and Reconsider the denial of the beneficiary's Form I-192 is adjudicated. As stated above, the Motion to Reopen and Reconsider the denial of the beneficiary's Form I-192 was dismissed on August 13, 2012. USCIS records do not reflect that any Form I-192 or related motion is pending at this time. As such, counsel's contention that the Form I-918 Supplement A must be held in abeyance until the Form I-192 is adjudicated is moot.

Furthermore, even if the Form I-192 or related motion were still pending, counsel has not shown that due process requires that the Form I-918 Supplement A be held in abeyance pending a decision on the Form I-192. The regulations do not require that a Form I-918 Supplement A be held in abeyance pending a decision on the Form I-192. See 8 C.F.R. § 214.14(f)(6)(iii). The petitioner has not established that her right to due process has been violated. See *Hassan v. INS*, 927 F.2d 465, 469

² In her brief, counsel mistakenly states that the Motion to Reopen and Reconsider the Notice of the Denial of the Form I-192 filed on May 16, 2011, is still pending.

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(9th Cir. 1991) (due process violation exists only where alien demonstrates resultant prejudice). The director's decision was neither arbitrary nor capricious, as a review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case.

On motion, counsel also asserts that the director erroneously denied the beneficiary's Form I-192 without fully considering the evidence of the beneficiary's rehabilitation and other equities. The AAO lacks jurisdiction to review the denial of the beneficiary's Form I-192 waiver application.

Conclusion

Although the beneficiary meets the criteria for U-3 nonimmigrant status as a qualifying family member of the petitioner, she is inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant was denied. The beneficiary is therefore ineligible for U-3 nonimmigrant status.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted. The appeal remains dismissed and the petition remains denied.