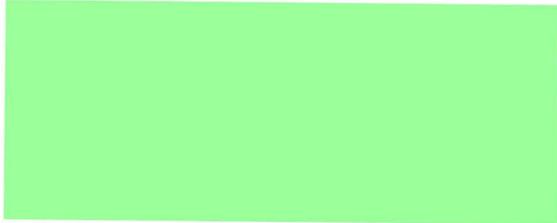




U.S. Citizenship
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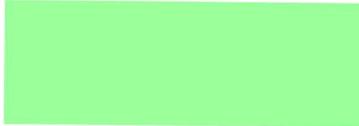


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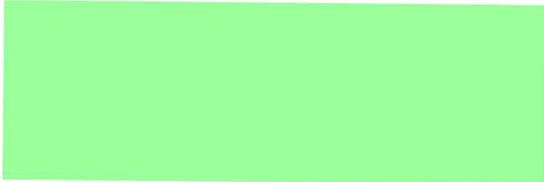
JUN 18 2014

IN RE: PETITIONER:
BENEFICIARY:



PETITION: Petition for U Nonimmigrant Classification for Qualifying Family Member of U-1 Recipient 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:



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), approved the petitioner's U nonimmigrant visa petition (Form I-918 U petition), 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 mother. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification of her mother 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.

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.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(6) Illegal entrants and immigration violators.-

* * *

(C) Misrepresentation.-

(i) In general. –Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Facts and Procedural History

The petitioner filed the Form I-918 Supplement A on November 1, 2011 for the beneficiary, a native and citizen of Peru. On the same day, the beneficiary filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On June 1, 2012, the director issued a Request for Evidence (RFE) regarding the Form I-192, noting that the beneficiary was inadmissible under section 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act. The beneficiary, through counsel, responded with additional evidence. On January 8, 2013, the director denied the Form I-192 finding the beneficiary inadmissible under section 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act for entering into a marriage for the purpose of evading the immigration laws. The director denied the petitioner's Form I-918 Supplement A on the same date

because the beneficiary's Form I-192 had been denied. On February 11, 2013, the beneficiary filed another Form I-192 which the director denied as a matter of discretion. The petitioner, through counsel, timely appealed the denial of the Form I-918 Supplement A.

On appeal, counsel contends that USCIS applied the "incorrect standard" when adjudicating the beneficiary's waiver application and she is also the victim of ineffective assistance of counsel.

The Beneficiary's Inadmissibility

All nonimmigrants, including U nonimmigrants, must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For qualifying family members of U-1 nonimmigrants 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 a Form I-192 in conjunction with a Form I-918 Supplement A in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192, the only issue before the AAO is whether the director was correct in finding the beneficiary inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

The record establishes that on September 17, 1997, the beneficiary married a U.S. citizen. On September 26, 1997, the beneficiary's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the beneficiary. On August 23, 1999, the District Director, San Francisco, California, denied the Form I-130, noting that during the visa petition interview, the beneficiary and her spouse gave contradictory testimony regarding their marital relationship. The District Director found the beneficiary and her spouse had entered into their marriage for the sole purpose of evading the immigration laws of the United States. The beneficiary's spouse filed an appeal of the District Director's decision with the Board of Immigration Appeals (Board) which the Board dismissed on April 29, 2002.

Counsel claims that it is unreasonable for USCIS to require documentary evidence of the bona fide nature of the beneficiary's relationship with her ex-husband because so much time has passed since their divorce¹ and the Board's dismissal of the Form I-130 appeal. However, other than a statement from the beneficiary and copies of documents already submitted in the record, the beneficiary has failed to submit any rebuttal evidence. The beneficiary may contest her inadmissibility due to fraud or misrepresentation, but it is her burden to prove eligibility for the immigration benefit sought. See section 291 of the Act; 8 C.F.R. § 214.14(c)(4). See also *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975) ("where there is reason to doubt the validity of the marital relationship, [the burden shifts to the applicant to] present evidence to show that it was not entered into for the primary purpose of evading the immigration laws"). The evidence in the record, including the interview notes, the beneficiary's ex-husband's unsolicited testimony, the Board's decision, evidence provided in response to the RFE, and the beneficiary's statements, is sufficient to show that the beneficiary entered into her marriage for the purpose of evading the immigration laws of the United States.

¹ The beneficiary's divorce was finalized on November 5, 2001.

Therefore, the beneficiary is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a U.S. immigration benefit through fraud or willful misrepresentation.

Counsel also claims that the beneficiary is the victim of ineffective assistance of counsel. An appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The Ninth Circuit Court of Appeals, within whose jurisdiction this petition arose, has held that strict adherence to *Lozada* is not required when the record clearly shows the ineffective assistance of counsel. See *Castillo-Perez v. I.N.S.*, 212 F.3d 518, 525-27 (9th Cir. 2000); *Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir. 2000). On appeal, counsel states the beneficiary's previous counsel failed to provide an adequate response to the RFE regarding the Form I-192. She notes that previous counsel submitted evidence in support of the waiver but it was not relevant to the adjudication of the waiver. Counsel's claims do not show a clear and obvious case of ineffective assistance of counsel that would merit a waiver of the *Lozada* requirements.

The beneficiary did not file a complaint with the State Bar of California against her prior attorney for ineffective assistance of counsel. Additionally, the beneficiary's claim for relief in this proceeding for ineffective assistance of counsel is not supported by a copy of the retainer or an affidavit from the beneficiary describing her agreement with prior counsel. Nor does the record establish that the beneficiary's prior counsel has been informed of the allegations against her and has been given a chance to respond. As such, the beneficiary has not demonstrated that her failure to adequately respond to the RFE was due to ineffective assistance of counsel.

The director denied the beneficiary's application for a waiver of inadmissibility and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 Supplement A. 8 C.F.R. § 212.17(b)(3).

Conclusion

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). The petitioner has not established that the beneficiary is admissible to the United States or that her ground of inadmissibility has been waived. In addition, the beneficiary has not established an ineffective assistance of counsel claim. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

ORDER: The appeal is dismissed. The petition remains denied.