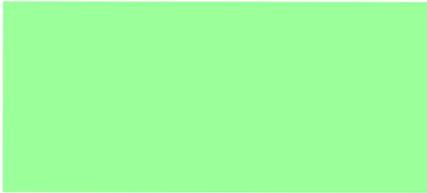


(b)(6)

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



U.S. Citizenship
and Immigration
Services



Date: FEB 19 2015

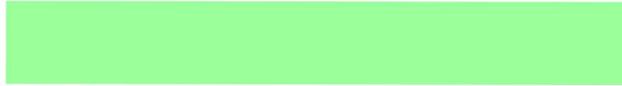
Office: VERMONT SERVICE CENTER

File: 

IN RE:

PETITIONER:

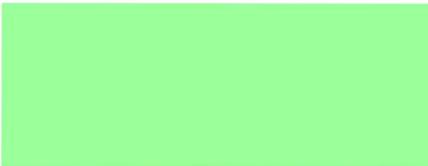
BENEFICIARY:



PETITION:

Petition 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)

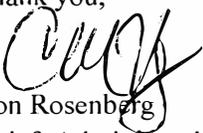
ON BEHALF OF BENEFICIARY:



INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), approved the petitioner's U nonimmigrant status 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 the beneficiary. 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 the beneficiary 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 nonimmigrant. The director approved the petitioner's I-918 U petition, but denied the Form I-918 Supplement A, finding that the petitioner failed to establish a valid spousal relationship with the beneficiary. On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act provides 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;[.]

The term "qualifying family member," as used in U nonimmigrant visa proceedings, is defined at 8 C.F.R. § 214.14(a)(1) and means:

in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), the spouse or child(ren) of such alien[.]

Page 3

Pursuant to the regulation at 8 C.F.R. § 214.14(f)(4), except for certain specified exceptions inapplicable here, the relationship between the petitioner and the qualifying family member must exist at the time the Form I-918 U petition is filed.

Facts and Procedural History

On July 20, 2012, the petitioner filed a Form I-918 Petition for U Nonimmigrant Status (Form I-918 U petition), along with a Form I-918 Supplement A for J-H-¹, an individual that she identified as her spouse. J-H- simultaneously filed an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) to waive his grounds of inadmissibility, noting that he entered the United States without inspection, admission, or parole. The director subsequently approved the petitioner's Form I-918 U petition, but denied the instant Form I-918 Supplement A because the petitioner and beneficiary did not have a qualifying spousal relationship at the time the Form I-918 U petition was filed. The petitioner appeals the director's decision, submitting additional evidence.

Analysis

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, establishes the petitioner's statutory eligibility and we withdraw the director's decision to deny the petition based on the stated grounds.

The elements of a valid common law marriage in Alabama are: (1) capacity; (2) present agreement or mutual consent to enter into the marriage relationship, permanent and exclusive of all others; (3) public recognition of the existence of the marriage; and (4) cohabitation or mutual assumption openly of marital duties and obligations. *Adams v. Boan*, 559 So.2d 1084, 1086 (Ala. 1990); see *Piel v. Brown*, 361 So.2d 90, 94 (Ala. 1978) (discussing the different language used throughout the relevant case law to describe the fourth element, which is often referred to as "consummation."). In the RFE, the director acknowledged that the petitioner had satisfied the capacity requirement, and demonstrated "consummation" through the birth certificate of the couple's daughter. The director requested additional evidence documenting the couple's agreement to enter into the marriage relationship, and public recognition of the marriage. In response, the petitioner submitted an affidavit signed by her and J-H-, attesting to their continuous cohabitation since 1997 and the birth of their daughter in 2000. The petitioner also provided a marriage certificate indicating that the couple's marriage was solemnized on [REDACTED] two letters attesting to the couple's cohabitation; and evidence of joint automobile insurance, effective September 8, 2011.

In her decision, the director concluded that the documentation submitted below was insufficient to establish a valid common law marriage as of the date the petitioner filed her Form I-918 U self-petition. On appeal, the petitioner presents additional documentation demonstrating the required elements of a valid Alabama common law marriage. The petitioner submits a more specific joint affidavit from her and J-H- attesting to joint residence as husband and wife since 1997, and agreement to enter into a marriage relationship at that time. They further attest that since the inception of their relationship, they have introduced themselves in the community as husband and wife. The petitioner also provides five additional letters from friends,

¹ Name withheld to protect the individual's identity.

family, and community members in which they attest to knowing the couple as husband and wife for several years. The evidence submitted on appeal is sufficient to establish the petitioner's agreement to enter into a marriage relationship with J-H-, and public recognition of the existence of the marriage. The petitioner has thus demonstrated all required elements of a valid common law marriage in Alabama, and has consequently established J-H-'s eligibility as a qualifying family member for derivative U nonimmigrant classification as of the date the petitioner filed her Form I-918 U petition. The director's decision to the contrary is hereby withdrawn.

Admissibility

Although the petitioner has now established J-H-'s statutory eligibility for derivative U nonimmigrant classification, the petition may not be approved because he remains inadmissible to the United States and his waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii) require the filing of a Form I-192 in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the director determined that the petitioner was inadmissible under sections 212(a)(7)(B)(i)(I) (no valid unexpired immigrant visa or entry document), and 212(a)(6)(A)(i) (present without admission or parole) of the Act without analysis and denied J-H-'s Form I-192 waiver application solely on the basis of the denial of the Form I-918 U Supplement A. *See Decision of the Director Denying the Form I-192*, dated December 13, 2013. Because the petitioner has overcome this basis for denial on appeal, we will remand the matter to the director for reconsideration of J-H-'s Form I-192 waiver application.

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). Here that burden has been met as to the petitioner's spouse's statutory eligibility for derivative U nonimmigrant classification. The petition is not approvable, however, because the petitioner's spouse remains inadmissible to the United States and his waiver application was denied. Because the sole basis for denial of the petitioner's spouse's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The December 13, 2013, decision of the Vermont Service Center is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U Supplement A, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.