



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-L-T-

DATE: NOV. 16, 2015

MOTION FROM ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918 SUPPLEMENT A, PETITION FOR QUALIFYING FAMILY MEMBER OF U-1 RECIPIENT

The Petitioner seeks nonimmigrant classification of the Derivative as a qualifying family member of a U-1 nonimmigrant. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii). The Director, Vermont Service Center, denied the petition and the AAO dismissed the appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The Director denied the Form I-918 Supplement A, Petition for Qualifying Family Member of a U-1 Recipient, determining that the Derivative was not eligible for classification as a U nonimmigrant because he was culpable for the criminal activity of which the Petitioner was a victim and which established the Petitioner's eligibility for U nonimmigrant status. Our prior decision is incorporated here by reference. In support of the motion to reopen, the Petitioner submitted a brief and supporting documents.

I. APPLICABLE LAW AND REGULATIONS

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victims' qualifying family members. For an alien victim of certain criminal activity who is 21 years of age or older, section 101(a)(15)(U)(ii)(II) of the Act defines a qualifying family member as the victim's spouse and children. *See also* section 214(p)(7) of the Act.

Section 204(a)(1)(L) of the Act states:

Notwithstanding the previous provisions of this paragraph, an individual who . . . had the status of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15) may not file a petition for classification under this section or section 214 to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual's child) which established the individual's (or individual's child) eligibility . . . for such nonimmigrant status.

The regulation further states that “[a] qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien’s eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 non-immigrant status.” 8 C.F.R. § 214.14(f)(1).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Form I-918, Petition for U Nonimmigrant Status, as well as a Form I-918 Supplement A on behalf of the Derivative, who is the son of the Petitioner. The Derivative stabbed the Petitioner and was arrested for assault with a deadly weapon and, on that basis, the Form I-918 was approved for the Petitioner but the Director denied the Form I-918 Supplement A, finding that the Derivative was not eligible for U-3 status because he was culpable for the criminal activity of which the Petitioner was a victim. The AAO dismissed an appeal of the Director’s decision due to a lack of discretion to waive the application of section 204(a)(1)(L) of the Act.

III. ANALYSIS

We conducted our prior appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the decision to dismiss the appeal and the Derivative remains ineligible for U-3 status.

The facts were recounted in our earlier decision and are not challenged on motion and, accordingly, will not be extensively restated. The salient facts are that the Derivative stabbed his father at the home they shared in the midst of a schizophrenic episode. Subsequently, the Derivative was hospitalized in a psychiatric facility and his mental illness is now managed through medication and therapy. The Petitioner makes the same argument on motion as was made on appeal that, because the crime with which the Derivative was charged was not domestic violence, the bar for derivative status for family members who commit the criminal activity in a “family violence” context should not apply to the Derivative.

The regulation at 8 C.F.R. § 214.14(f)(1) is clear: “[a] qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien’s eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 non-immigrant status.” The term “family violence” is discussed in the Preamble to the U nonimmigrant rule, and provides that any family member who commits an act of violence against the U-1 petitioner is ineligible for U derivative nonimmigrant status. *See* 72 Fed. Reg. 53014, 53025 (Sept. 17, 2007). The Petitioner has again presented no legal authority for the assertion that the regulation at 8 C.F.R. § 214.14(f)(1) is limited to spouses who commit domestic violence against their partners and parents who commit child abuse. We recognize that the Derivative was suffering from an undiagnosed mental health issue when he committed the crime but we have no discretion to waive the application of section 204(a)(1)(L) of the Act as explicated in the regulation at 8 C.F.R. § 214.14(f)(1). The Derivative is culpable of the qualifying criminal activity which is the basis for

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the approval of the Petitioner's Form I-918 and he cannot be granted U-3 nonimmigrant status. The motion to reopen and the motion to reconsider are denied.

IV. CONCLUSION

In these 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 to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of L-L-T*, ID# 14696 (AAO Nov. 16, 2015)