U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8262865

Date: AUG. 24, 2021

Appeal of Vermont Service Center Decision

Form I-918 – Supplement A, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, a "U-1" nonimmigrant, filed a Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (U derivative petition), seeking U nonimmigrant classification of the Derivative, her spouse, as a qualifying family member of a person granted U-1 status. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii) (discussing eligibility requirements for derivative status for spouse, child, parent, and sibling). The Director of the Vermont Service Center denied the U derivative petition, concluding that the Petitioner and her spouse were not married at the time she filed the underlying U petition, and therefore, the Derivative did not meet the definition of a qualifying family member as set forth under the regulations.

On appeal, the Petitioner argues that any regulation that purports to narrow the class(es) of persons the Act recognizes as U derivates, or that includes a temporal requirement for U derivatives that is not specified in the Act, is *ultra vires*, unlawful, and void. Upon *de novo* review, we will remand the matter to the Director to issue a new decision.

The regulation at 8 C.F.R. § 214.14(f)(4) states, in pertinent part, that the relationship between the U-1 principal and their qualifying family member (in this case, spouses) must exist at the time the underlying U petition was filed. However, the Ninth Circuit Court of Appeals has held that this regulation "is invalid insofar as it requires a derivative U-visa spouse to have been married to the principal petitioner when the application was filed." *Medina Tovar v. Zuchowski*, 982 F.3d 631, 633 (9th Cir. 2020) (en banc). U.S. Citizenship and Immigration Services recently adopted the Court's decision for nationwide application and will evaluate whether a spousal relationship existed at the time the underlying U petition was favorably adjudicated, rather than when it was filed. *See* USCIS Policy Alert PA-2021-13, *Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners* 3 (June 14, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf. Here, the record shows the Petitioner filed the underlying U petition in June of 2014 which was approved in May of 2018. She and the Derivative married in [redacted] 2015. Because the spousal relationship existed at the time the underlying U petition was favorably adjudicated, the Derivative is a qualifying family member under 8 C.F.R. § 214.14(f)(4). We withdraw the Director's finding to the contrary.

Because the Director determined that the Derivative was not a qualifying family member, she did not reach the merits of the Derivative's eligibility under the remaining criteria, including whether he is admissible to the United States. 8 C.F.R. 214.14(f)(1)(ii). We therefore remand the matter to the Director to determine the Derivative's eligibility under the other requirements for U-2 nonimmigrant status.

ORDER: The matter is remanded to the Director for further proceedings consistent with this opinion and for the entry of new decision, which, if adverse to the Petitioner, shall be certified to us for review.