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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

J15

Date: **SEP 06 2012** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

APPLICATION: Petition for Qualifying Family Member of a U-1 Nonimmigrant (Form I-929) Pursuant to Section 245(m)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(3)

ON BEHALF OF APPLICANT:

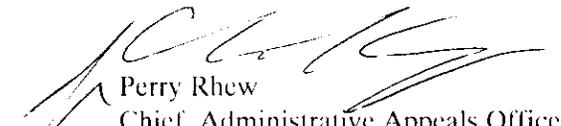
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center (the director) denied the Petition for Qualifying Family Member of a U-1 Nonimmigrant (Form I-929), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner was granted U-1 nonimmigrant status and subsequently became a lawful permanent resident of the United States under section 245(m)(1) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255(m)(1). She seeks to obtain lawful permanent resident status on the beneficiary's behalf pursuant to section 245(m)(3) of the Act.

#### *Applicable Law*

Section 245(m)(1) of the Act states, in pertinent part:

The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence[.]

Section 245(m)(3) of the Act allows qualifying family members who have never held U nonimmigrant status to adjust status in the United States or apply for an immigrant visa from abroad through the filing of a Form I-929. Section 245(m)(3) of the Act states:

Upon approval of adjustment of status under paragraph (1) of an alien described in section 101(a)(15)(U)(i) the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 101(a)(15)(U)(ii) if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

The term *qualifying family member* means a U-1 principal applicant's spouse, child, or, in the case of an alien child, a parent who has never been admitted to the United States as a nonimmigrant under sections 101(a)(15)(U) and 214(p) of the Act, 8 U.S.C. § 1184(p). 8 C.F.R. § 245.24(a)(2). Section 101(b)(1) of the Act defines the term "child," in part, as "an unmarried person under twenty-one years of age."

The regulation at 8 C.F.R. § 245.24(g) implementing section 245(m)(3) of the Act provides:

*Filing petitions for qualifying family members.* A principal U-1 applicant may file an immigrant petition under section 245(m)(3) of the Act on behalf of a qualifying family member as defined in paragraph (a)(2) of this section, provided that:

- (1) The qualifying family member has never held U nonimmigrant status;

- (2) The qualifying family relationship, as defined in paragraph (a)(2) of this section, exists at the time of the U-1 principal's adjustment and continues to exist through the adjudication of the adjustment or issuance of the immigrant visa for the qualifying family member;
- (3) The qualifying family member or the principal U-1 alien, would suffer extreme hardship as described in 8 CFR 245.24(g) (to the extent the factors listed are applicable) if the qualifying family member is not allowed to remain in or enter the United States; and
- (4) The principal U-1 alien has adjusted status to that of a lawful permanent resident, has a pending application for adjustment of status, or is concurrently filing an application for adjustment of status.

#### *Facts and Procedural History*

The petitioner was granted U-1 nonimmigrant status from [REDACTED] until [REDACTED]. The petitioner submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) for herself on [REDACTED] 2011, and submitted the instant Form I-929 on the beneficiary's behalf on [REDACTED] 2011. At the time the Form I-929 was filed, the beneficiary, who was born on [REDACTED] [REDACTED] years old. The petitioner became a lawful permanent resident on [REDACTED] 2011, after the beneficiary turned twenty-one. On [REDACTED], 2011, the director denied the instant Form I-929 because the qualifying relationship between the petitioner and the beneficiary no longer existed at the time the petitioner became a lawful permanent resident.

On appeal, counsel asserts that the age-out protections granted certain other derivatives by the Child Status Protection Act (CSPA), P.L. No. 107-208 (Aug. 6, 2002), should be extended to Form I-929 beneficiaries to comply with congressional intent regarding the humanitarian basis for the U nonimmigrant classification and promoting family unity.

#### *Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Based on the evidence in the record, we find no error in the director's decision to deny the Form I-929.

Congress has not enacted legislation extending the CSPA to Form I-929 petitions and we lack authority to waive the requirements of section 245(m)(3) of the Act, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). As required by the regulation at 8 C.F.R. § 245.24(g)(2), a beneficiary of a Form I-929 must not only be a qualifying family member when the petitioner becomes a lawful permanent resident but must also remain a qualifying family member through the adjudication of the Form I-929. The record reflects that the beneficiary ceased to qualify as the petitioner's child on November 8, 2011, six days prior to the petitioner becoming a lawful permanent resident.



Page 4

*Conclusion*

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(h)(1). Here, that burden has not been met as to the beneficiary's eligibility to adjust status under section 245(m)(3) of the Act.

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