



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

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

In Re: 20134312

Date: FEB. 28, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, who sought and was granted “U-1” nonimmigrant classification, also seeks U nonimmigrant classification of the Derivative, her son, 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 Petitioner’s Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition), and we dismissed the Petitioner’s subsequent appeal, concluding that the Derivative did not submit the required fingerprints. The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will dismiss the motions.

I. LAW

Section 101(a)(15)(U)(ii) of the Act provides U nonimmigrant classification to the qualifying family members of victims of certain qualifying criminal activity. Qualifying family members include a U-1 nonimmigrant’s child who is admissible to the United States. *Id.* at section 101(a)(15)(U)(ii)(II); 8 C.F.R. §§ 214.14(a)(10) and (f)(1)(ii).

The regulation at 8 C.F.R. § 214.14(f)(5) states that “[t]he provisions for biometric capture and evidentiary standards in paragraphs (c)(3) and (c)(4) of this section also are applicable to petitions for qualifying family members.” 8 C.F.R. § 214.14(c)(3) states that “[a]ll petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I-918.”

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect

application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In our prior decision dismissing the Petitioner's appeal, incorporated here by reference, we determined that the record continued to lack the Derivative's fingerprints, as required under 8 C.F.R. § 214.14(f)(5). We noted that the Director issued a request for evidence (RFE) in May 2018, explaining that U.S. Citizenship and Immigration Services (USCIS) needed the Derivative's fingerprints in order to conduct a criminal records check. The RFE notified the Petitioner that she had been given the maximum time period allowed for responding to an RFE and that the regulations do not provide for an extension of time to submit requested evidence. In response to the RFE in August 2018, the Petitioner requested additional time to submit the Derivative's fingerprints. On appeal, the Petitioner explained that the Derivative lives in Honduras and that it was difficult to contact him. The Derivative contended he had tried several times to get his fingerprints taken, but "at the end of the day it was impossible."

On motion, the Petitioner, through counsel, states that "[s]ince the COVID-19 pandemic started at the beginning of 2020[,] the biometric services in the U.S. [E]mbassy located in Honduras and its consulates were suspended due to the restrictions created to control the pandemic in Honduras. These services have been suspended for a long period of time and until this date there is no certain day for the reopening of these premises." The Petitioner further states that in May 2019, the U.S. Embassy in Honduras issued an alert advising of local demonstrations and a need to minimize unnecessary travel around the country. She explains that, in June 2019, the embassy issued a second alert advising that "the consular section will only be able to provide emergency services for U.S. citizens during June 2019 and cannot schedule any new appointments for an indefinite period." The Petitioner asserts that "these incidents took place on the same date when [the Derivative] had [his] biometric appointment at the U.S. [E]mbassy [and] . . . the failure to comply with this requirement was out of the control of [the Petitioner] and her children." The Petitioner also states that because the Derivative resides in a small town far from the main cities, "it has been very difficult for him to travel to the main cities [and he] has been [the] victim of robberies and physical assaults on [his] journey to the U.S. [E]mbassy." The Petitioner submits a police report indicating that in November 2019, the Derivative and his brother were victims of assault and robbery. The Petitioner includes three letters from witnesses indicating that the Derivative and his brother were assaulted and robbed in November 2019, and again in January 2021, both times on their way home.

While we do not seek to diminish the difficulty the Derivative may face in trying to get to the U.S. Embassy in Honduras and successfully complete the fingerprint process, the Petitioner has been afforded multiple opportunities to meet this requirement. The Director initially advised the Petitioner of this requirement and provided an RFE in May 2018, affording the Petitioner 12 weeks to complete the fingerprint process. Then, although the derivative U petition had been denied, the Director again provided the Petitioner with a fingerprint notice to present at the U.S. Embassy in April 2019, which afforded the Petitioner another 12 weeks to comply with the requirement. However, the Petitioner has not done so.

The Petitioner provided a copy of an email sent from the Derivative to the U.S. Embassy in Honduras, dated December 2018, four months after the required response date listed on the RFE, requesting “rescheduling [a] biometric appointment.” The response from the Consular Section requested a copy of the notice requesting biometrics in order to schedule the appointment. The Derivative replied the same day providing documents sent to him from counsel and the Consular Section replied that the “allotted time expired.” The Petitioner did not provide an explanation for this; however, the RFE had a required response date of August 2018, and this email exchange occurred in December 2018. Neither the Petitioner, nor the Derivative, discuss or provide evidence of when the original appointment at the U.S. Embassy was set, why the Derivative was unable to attend or why he needed to reschedule, and why his message to the U.S. Embassy to reschedule the fingerprint appointment was sent four months after the due date on the RFE.

With respect to the April 2019 fingerprint notice sent to the Petitioner, counsel explains on motion that there was civil unrest in Honduras at that time. Counsel references alerts issued by the U.S. Embassy in Honduras in May 2019, advising that it had been asked to minimize unnecessary travel in the region, and in June 2019, advising that the Consular Section could only provide emergency services to U.S. citizens at that time and could not schedule new appointments for an indefinite period. Counsel specifically states that “[i]t is important to note that these incidents took place on the same date when [the Derivative] had [his] biometric appointment at the U.S. [E]mbassy. Therefore, it is reasonable to assume that the failure to comply with this requirement was out of the control of [the Petitioner] and [the Derivative].” However, the assertions of counsel are not evidence and must be supported by independent documentation. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (“We note statements or assertions by counsel are not evidence”). Here, the Petitioner has not submitted a statement or other relevant evidence on motion corroborative of her counsel’s assertions. Again, neither the Petitioner, nor the Derivative, discuss or provide evidence of when the 2019 appointment at the U.S. Embassy was set, or of attempts to reschedule this appointment for a later date.

Because the Petitioner has not complied with the fingerprint requirements at 8 C.F.R. § 214.14(f)(5), the Derivative remains ineligible for U nonimmigrant status under section 101(a)(15)(U) of the Act. Although we recognize the hardship that this result may cause, we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry “the force and effect of law”).

III. CONCLUSION

The Petitioner has not submitted new evidence or demonstrated any error of law or policy in our decision dismissing her appeal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.