U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26844631

Date: MAY 24, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, who seeks "U-1" nonimmigrant classification for herself, also seeks U-4 nonimmigrant classification of the Derivative 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 U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity, and affords derivative status to qualifying family members. The Director of the Vermont Service Center denied the derivative U petition, concluding that the Derivative, her parent, was not a qualifying family member because the Petitioner was over the age of 21 at the time of filing her own Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 parent, when the U-1 nonimmigrant is under 21 years of age. 8 C.F.R. § 214.14(a)(10), (f)(1). To establish eligibility, the relationship between the U-1 nonimmigrant and the parent must have existed at the time of filing the U petition, and must continue to exist through the adjudication of the derivative U petition. 8 C.F.R. § 214.14(f)(4).

The Petitioner was born on [redacted] 1996. USCIS marked the Petitioner's U petition (and the derivative U petition) as "received" on Tuesday, [redacted] 2017, two days after the Petitioner reached 21 years of age. The Director denied the derivative U petition, concluding that the Derivative, the Petitioner's parent, did not meet the definition of qualifying family member at the time the Petitioner filed her own U petition because she had previously reached the age of 21.

On appeal, the Petitioner asserts that USCIS received her U petition (and the derivative U petition) over the weekend, prior to her 21st birthday. The Petitioner submits a copy of a U.S. Postal Service priority express mail receipt. The tracking information obtained from that receipt shows that the U petition arrived at the designated USCIS filing location on Saturday, [redacted] 2017, one day prior to the Petitioner's 21st birthday. As such, the Petitioner contends that her U petition was received by USCIS prior to her 21st birthday.

During the pendency of the Petitioner's appeal, USCIS issued policy guidance clarifying the definition of "day" at 8 C.F.R. § 1.2 and associated paper-based filing periods ending on Saturdays, Sundays, or federal holidays. *See* 1 *USCIS Policy Manual* B.6, https://www.uscis.gov/policymanual; *see also* Policy Alert PA-2023-10 *Filing Periods and Response Timeframes Ending on Saturdays, Sundays, or Federal Holidays* (March 29, 2023), https://www.uscis.gov/policy-manual/updates. The policy guidance clarifies that, when the last day of a filing period for a paper-based benefit ends on a Saturday, Sunday, or a federal holiday, 8 C.F.R. § 1.2 extends the filing period until the end of the next business day. *See* 1 *USCIS Policy Manual*, *supra*, at B.6(D). Here, the Petitioner's 21st birthday was Sunday, [redacted] 2017, and the day following, Monday [redacted] 2017, was a federal holiday. Therefore, the Petitioner's U petition (and the derivative U petition), received by USCIS the following business day [redacted] 2017, was timely filed.

Based on the evidence in the record and the foregoing analysis, we conclude that the Petitioner's U petition was timely filed. As such, the Derivative, the Petitioner's parent, met the definition of a qualifying family member at the time the Petitioner filed her U petition. Accordingly, the Director's determination is withdrawn.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.