U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29628966

Date: DEC. 20, 2023

Appeal of Vermont Service Center Decision

Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, who was granted lawful permanent residency based on her "U-1" nonimmigrant status, seeks immigrant classification of the Derivative, her spouse, as a qualifying family member. *See* Immigration and Nationality Act (the Act) section 245(m)(3), 8 U.S.C. § 1255(m)(3) (outlining eligibility for classification).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner had not established, as required, that the Derivative was a qualifying family member for purposes of adjustment of status under section 245(m)(3) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 dismiss the appeal.

A U-1 nonimmigrant who has applied for, or gained, her lawful permanent residency may seek lawful permanent residency on behalf of a qualifying family member who has never held U nonimmigrant status, if granting the status would avoid extreme hardship. Section 245(m)(3) of the Act. The term "qualifying family member" is defined as "a U-1 principal applicant's spouse, child, or, in the case of [a U-1 principal who is a] child, a parent who has never been admitted to the United State as a nonimmigrant under sections 101(a)(15)(U) and 214(p) of the Act." 8 C.F.R. § 245.24(a)(2). The qualifying family relationship must exist at the time of the U-1 principal's adjustment of status to lawful permanent residency and continue to exist through the adjudication of the qualifying family member's U immigrant petition and adjustment of status to a lawful permanent resident (LPR) or issuance of an immigrant visa. 8 C.F.R. § 245.24(g)(2).

The Petitioner was granted U nonimmigrant status in February 2011, and she subsequently filed her Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application) in September 2014. The Petitioner's U adjustment application was approved in May 2015. In February 2022, she filed the instant Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition) on behalf of the Derivative, her spouse. With the U immigrant

petition, she submitted the marriage certificate between her and the Derivative, which indicated that they were married in [redacted] 2020. As a result, the Director denied the U immigrant petition, as the Petitioner had not established that the qualifying relationship existed at the time of her adjustment of status to lawful permanent residency.

On appeal, the Petitioner submits a brief, where she contends that, as the statute uses the word "upon" it should be interpreted "to establish that the adjustment may occur on or after the U-1 principal adjusts his or her status." Section 245(m)(3) of the Act states, "[u]pon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(U)(i) of this title 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 1101(a)(15)(U)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship." The Petitioner further claims that the "statutory construction of this humanitarian form of relief does not require that the U-1 principal be married to his or her beneficiary spouse at the time of the U-1 adjustment of status."

In support of her contentions, the Petitioner cites the U immigrant petition form instructions, which do not explicitly state that the relationship must exist at the time the U-1 nonimmigrant adjusted their status, and instead only indicates that a petitioner must submit evidence that they have adjusted status or have a pending adjustment application, evidence of the relationship, evidence of extreme hardship to the relative, and evidence that discretion should be exercised. The Petitioner asserts that the form instructions "make it clear that the spousal relationship must exist at the time of filing the I-929 and no documentation is required to establish that the spousal relationship existed at the time the U-1 nonimmigrant had his or her adjustment of status approved." The Petitioner further cites *Medina-Tovar v. Zuchowski*, 982 F.3d 631 (9th Cir. 2020), in which the Ninth Circuit concluded that a U nonimmigrant petitioner was not required to establish that a spousal relationship existed at the time of filing their Form I-918, Petition for U Nonimmigrant Status, in order for their spouse to be considered a qualifying family member for the purposes of obtaining a U nonimmigrant visa, and instead, should only be required to establish that the relationship existed at the time of adjudication of a petitioner's Form I-918.

Although the Petitioner contends that the "regulation at 8 C.F.R. § 245.24(g)(2) interjects a timing requirement not contemplated by the statute" at section 245(m)(3) of the Act, we note that distinct from *Medina-Tovar v. Zuchowski*, the Third Circuit affirmed a lower court decision in *Contreras Aybar v. DHS*, 916 F.3d 270 (3d Cir. 2019), validating the requirement at 8 C.F.R. 245.24(g)(2) that a qualifying family member relationship must exist at the time of filing and continue through adjudication. We note *Medina-Tovar v. Zuchowski* as further distinct, as the determination from the court regarded a petitioner whose marriage took place during the pendency of a U nonimmigrant petition, prior to its adjudication, and prior to the petitioner filing for or receiving approval for adjustment of status. In the present case, the Petitioner adjusted status to that of a lawful permanent resident in May 2015, and did not marry the Derivative until [redacted] 2020, over 5 years later. The Petitioner has not provided a relevant citation to establish that the regulation at 8 C.F.R. § 245.24(g)(2), is unlawful, or provided a pertinent precedent decision stating that a petitioner may establish a qualifying relationship after their adjustment of status to that of a lawful permanent resident has been adjudicated. Although we recognize the hardship to the Applicant and her family 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"). We lack the authority to waive or disregard any of the Act's requirements, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695 (1974) ("So long as this regulation is extant it has the force of law.")

Here, as noted, the Petitioner did not marry the Derivative until 5 years after her U adjustment application was approved. As such we conclude that the Petitioner has not overcome the Director's determination that she did not establish that the Derivative was a qualifying family member for purposes of adjustment of status under section 245(m)(3) of the Act.

ORDER: The appeal is dismissed.