U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25213932

Date: FEB. 22, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks immigrant classification of the Derivative, her parent, as a qualifying family member under section 245(m)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(3). The Director of the Vermont Service Center denied the Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition), concluding that the Petitioner had not established that the Derivative was a qualifying family member for purposes of adjustment of status under section 245(m)(3) of the Act because the Petitioner was no longer the Derivative's "child" at the time of the adjudication of the U immigrant petition.

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, lawful permanent resident (LPR) status may seek LPR status 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 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 C.F.R. § 245.24(a)(2). The term "child" is defined as "an unmarried person under twenty-one years of age . . . ." Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b). 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 adjustment or issuance of an immigrant visa for the qualifying family member. 8 C.F.R. § 245.24(g)(2).

The Petitioner, a U-1 nonimmigrant, filed her own Form I-485, Application to Adjust Status (U adjustment application) in 2020.[1] While her U adjustment application was pending, she filed the U derivative petition on behalf of her mother, a native and citizen of Nigeria. The Petitioner reached 21 years of age prior to final adjudication of the U derivative petition. Accordingly, the Director denied the petition because the Derivative was no longer a child and therefore lacked a qualifying family

[1] The Petitioner eventually adjusted status to that of an LPR in 2022.

relationship with her parent, as defined at 8 C.F.R. § 245.24(a)(2), for purposes of adjustment of status under section 245(m)(3) of the Act.

On appeal, the Petitioner alleges that USCIS failed to adjudicate her U adjustment application in a timely manner and the delay caused her to age out for purposes of sponsoring her mother through a U immigrant petition. She states that USCIS improperly issued a request for evidence to obtain a copy of her birth certificate, despite the fact that she had already submitted it, and then denied her U adjustment application before later reopening and approving it. She claims that if the Director had accepted her initial submission of her birth certificate, her U adjustment application would have been approved sooner and she and her mother would have had a qualifying relationship at the time of adjudication of the U immigrant petition.

On appeal, the Petitioner has not overcome the Director's ground for denial of the U immigrant petition. In order for her mother to be a qualifying family member under 245(m)(3) of the Act, the Petitioner must be a child filing on behalf of her parent at the time of the Petitioner's adjustment of status and continuing through the adjudication of the U immigrant petition. *See* section 101(b)(1) of the Act (defining child as "an unmarried person under twenty-one years of age"); 8 C.F.R. § 245.24(g)(2) (stating that the qualifying parent-child relationship must exist at the time of the U-1 principal's adjustment of status through the adjudication of the adjustment application or issuance of an immigrant visa for the qualifying family member). Here, the Petitioner was over 21 years of age at the time of adjudication of the U immigrant petition, and accordingly did not meet the definition of a "child" who may file a U immigrant petition on her parent's behalf as described at 8 C.F.R. § 245.24(a)(2). We acknowledge the Petitioner's assertion that delays in the adjudication of her U adjustment application caused her to age out prior to adjudication of the U immigrant petition she filed on her mother's behalf. However, we lack authority to waive the requirements of the statute, as implemented by the regulation. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials).

Because the Petitioner had already reached the age of 21 years at the time of adjudication of the U immigrant petition she filed on her mother's behalf, she was no longer a "child" under the Act. Accordingly, the Petitioner no longer has a qualifying relationship with her mother as defined under 8 C.F.R. § 245.24(a)(2), and has not established the Derivative's eligibility under section 245(m)(3) of the Act as a qualifying family member of a U-1 principal applicant.

ORDER: The appeal is dismissed.