U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24173008

Date: JAN. 31, 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 stepson, 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 record did not establish that the Petitioner and the Derivative had a qualifying family relationship. 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.

I. LAW

A U-1 nonimmigrant who has gained their 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 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 [21] 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 the immigrant visa for the qualifying family member. 8 C.F.R. § 245.24(g)(2).

II. ANALYSIS

The Derivative, a native and citizen of Guatemala, was born on [redacted] 2000. The Petitioner, his stepmother, was granted U nonimmigrant status and subsequently became a lawful permanent resident (LPR) on May 6, 2015.[1] The Petitioner filed the instant U immigrant petition on behalf of the Derivative on December 29, 2021, the Derivative turned 21 years old on [redacted], 2021, and the U immigrant petition was denied on April 15, 2022. The Petitioner submitted, among other documents, a Declaration and Registration of Informal Marriage (marriage certificate) from [redacted] County, Texas, dated [redacted] 2016. The marriage certificate incudes declarations from the Petitioner and the Derivative's father that they agreed to be married on September 22, 2014, and after that date they lived together as a married couple and represented to others that they were married.

In denying the U immigrant petition, the Director mentioned that the Petitioner's marriage took place on [redacted] 2016, which is after she adjusted her status to an LPR, and therefore a qualifying family relationship with the Derivative did not exist on May 6, 2015, when she adjusted her status to an LPR. Furthermore, as the Derivative turned 21 years old while the U immigrant petition was pending, the Director determined that the Derivative no longer met the definition of a child under the Act. Based on these reasons, the Director concluded the Petitioner did not have a qualifying family relationship with the Derivative.

On appeal, the Petitioner asserts that the Derivative should be afforded the same age-out protection extended by Congress to children of U-1 petitioners under the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), thus preserving his status as a child as of the December 29, 2021 date that the Petitioner filed the U immigrant petition. However, the VAWA 2013 amendments specifically amended only section 214(p) of the Act to provide age-out protection to children of U-1 nonimmigrants who file a derivative U petition and for the duration of the period that the U petition and/or the derivative U petition remains pending. *See* VAWA 2013, Pub. L. 113- 4, 127 Stat. 54, 112 (providing that a child derivative who "seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(U)(i) of this title, and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child *for purposes of section 101(a)(15)(U)(ii) of this title*, if the alien attains 21 years of age after such parent's U nonimmigrant petition was filed but while it was pending") (codified at section 214(p)(7) of the Act); *see also* USCIS Policy Memorandum PM-602-0102, *Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions,* at 4, http://www.uscis.gov/laws/policy-memoranda (providing that when a principal petitioner for U nonimmigrant status properly files their principal U nonimmigrant petition, the age of the derivative U nonimmigrant is established upon the date on which the principal properly filed for their principal U nonimmigrant status).

Although Congress could have made a similar amendment to section 245(m)(3) of the Act, it did not do so, and we presume that this decision was intentional on its part. *See, e.g., Lorillard v. Pons*, 434 U.S. 575, 580 (1977) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change"); *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotations and citation omitted) ("Where

[1] The Director incorrectly listed this date as May 16, 2015.

Congress includes particular language in one section of a statute but omits it [from] another, . . . it is generally presumed that Congress acts intentionally and purposed in the disparate inclusion or exclusion"); *Shalom Pentecostal Church v. Acting Sec'y U.S. Dep't of Homeland Sec.*, 783 F.3d 156, 166 (3d Cir. 2015) (internal quotations omitted) ("[W]e have concluded that we must read the statute as written, giving meaning to distinctions between statutory provisions, rather than rely on implicit assumptions of intent"). Absent any binding authority extending the age-out protections of VAWA 2013 to section 245(m)(3) of the Act, we cannot determine that they apply in this case.

In order to establish eligibility as a qualifying family member under 245(m)(3) of the Act, the Derivative must meet the definition of a child at the time of the Petitioner's adjustment of status to an LPR and continue through the adjudication of the Derivative's U immigrant petition and subsequent adjustment of status to an LPR or issuance of an immigrant visa. Here, the Derivative turned 21 years old prior to the adjudication of the U immigrant petition. Therefore, the Derivative did not meet the definition of a child under the Act and did not have a qualifying family relationship with the Petitioner in order to be eligible for an approved U immigrant petition under section 245(m)(3) of the Act.

Because this issue is dispositive for the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate argument that she married the Derivative's father on [redacted], 2014, and she therefore had a qualifying family relationship with the Derivative at the time she adjusted her status to an LPR on May 6, 2015. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.