



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

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

In Re: 20915736

Date: MAR. 2, 2022

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 stepchild, 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 Vermont Service Center Director denied the Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition). The denial of the U derivative petition is now before us on appeal. In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. 8 C.F.R. § 214.14(f)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we conclude that a remand is warranted in this case.

I. LAW

Individuals who gain their lawful permanent residency through their U-1 status may seek lawful permanent residency on behalf of a qualifying family member who has never held derivative U nonimmigrant status if granting the immigrant status would avoid extreme hardship to either the U-1 principal or the qualifying family member. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(g). Even if hardship is established, ultimately, a petitioner bears the burden of proof to demonstrate that U.S. Citizenship and Immigration Services (USCIS) should exercise its discretion and adjust the status of a qualifying family member, including his or her spouse. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(a)(2), (h)(1)(v).

Petitioners must demonstrate that the qualifying family relationship exists at the time of the U-1 principal’s adjustment and continues 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). The record must also establish that the qualifying family member or the petitioner would suffer extreme hardship as described in 8 CFR 245.24(h)(1)(iv) if the qualifying family member is not allowed to remain in or enter the United States. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(g)(3).

II. ANALYSIS

The Petitioner is an El Salvadorian citizen to whom USCIS adjusted her status to that of a lawful permanent resident in April of 2019 based on her principal U-1 nonimmigrant status. Subsequently, the Petitioner filed a U immigrant petition on behalf of the Derivative, her stepchild, who also is a citizen of El Salvador. The Director denied the U immigrant petition on three bases: (1) because of an insufficient translation of a foreign document, the Petitioner did not establish the qualifying relationship between her and the Derivative; (2) the Petitioner did not establish that she or the Derivative would experience extreme hardship if the stepchild was not allowed to enter or remain in the United States; and (3) the record did not contain a statement from the Derivative, as mandated by the regulation at 8 C.F.R. § 245.24(h)(1)(v), and the Director was unable to exercise discretion in her favor.

On appeal, the Petitioner submits a full English translation of the Derivative's birth certificate and a statement signed by the Derivative regarding a favorable exercise of USCIS' discretion. In considering the totality of the evidence in the record—to include the appeal brief, the new statement from the Derivative, and the Petitioner's statement—the material addresses whether the Petitioner or the Derivative would experience extreme hardship if the stepchild were not allowed to enter the United States. Because this evidence is directly relevant to the Director's bases for denying the U immigrant petition, we will remand the matter for further consideration of whether she has satisfied the requirements of 8 C.F.R. § 245.24(g)(1)–(4) and has otherwise established the Derivative's eligibility for adjustment of status to that of an LPR under section 245(m)(3) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for consideration of the new evidence and entry of a new decision.