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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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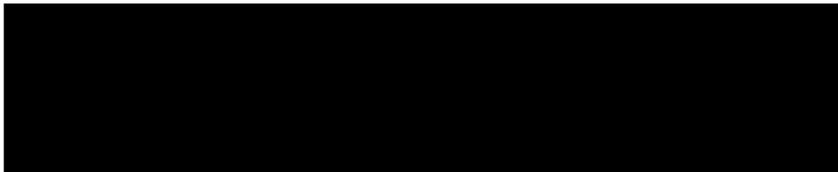
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Date: DEC 01 2011 Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

PETITION: Petition for U Nonimmigrant Classification for a Qualifying Family Member of a U-1 Recipient Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) filed by the petitioner on behalf of her daughter. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter returned to the director for further action.

The petitioner seeks nonimmigrant classification of her daughter under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U nonimmigrant.

The director denied the petition because the petitioner’s Form I-918, Petition for U Nonimmigrant Status, was denied and her daughter consequently did not meet the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10).

On appeal, the petitioner’s representative submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
- (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

* * *

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien[.]

Section 101(b)(1) of the Act defines a child, in relevant part, as: “an unmarried person under twenty-one years of age who is – (A) a child born in wedlock”

The regulation at 8 C.F.R. § 214.14(a)(10) defines a qualifying family member as, in pertinent part:

in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U), the spouse or child(ren) of such alien

Analysis

The petitioner is a 32 year-old citizen of Mexico. The beneficiary is the petitioner's unmarried daughter who was born in wedlock on December 18, 1996 in Mexico. On March 4, 2011, the director denied the petitioner's Form I-918 and on that same date he denied the instant Form I-918A based solely on the denial of the petitioner's Form I-918. The petitioner timely appealed the denial of her Form I-918 and the AAO has sustained her appeal and determined that the petitioner is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

As the sole ground for the director's denial has been overcome, the appeal will be sustained. The record shows that the beneficiary meets the statutory and regulatory definitions of a qualifying family member. Accordingly, the beneficiary is eligible for U-3 nonimmigrant status as the petitioner's child.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has been met as to the beneficiary's statutory eligibility for U nonimmigrant status as a qualifying family member.

The regulations also require qualifying family members to establish that they are admissible to the United States. 8 C.F.R. § 214.14(f)(1)(ii). In this case, the director denied the beneficiary's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, solely on the basis of the denial of the Form I-918 Supplement A. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). However, as the sole ground for denial of the beneficiary's Form I-192 has been overcome on appeal, we will return the matter to the director for reconsideration of the Form I-192.

ORDER: The appeal is sustained. Because the beneficiary is statutorily eligible for derivative U-3 nonimmigrant classification, the case is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 Supplement A, which, if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.