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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
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Services



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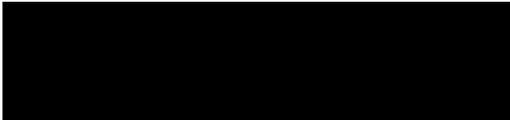
Office: VERMONT SERVICE CENTER Date:

FEB 18 2011

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, approved the petitioner's U-1 nonimmigrant status petition (Form I-918) but denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of the beneficiary. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The Form I-918 Supplement A will be approved.

The petitioner seeks nonimmigrant classification of the beneficiary 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 (child) of a U-1 nonimmigrant.

On May 14, 2010, counsel submitted a Form I-290B, Notice of Appeal or Motion, indicating that he was filing an appeal. The petitioner, through counsel, submitted additional evidence to establish the relationship between the petitioner and the beneficiary, and noted on the Form I-290B that the petitioner was still waiting for the beneficiary's "long form" birth certificate from the Republic of South Africa. Counsel requested that the appeal be held in abeyance for the submission of the beneficiary's birth certificate. On December 7, 2010, counsel submitted the beneficiary's long form birth certificate, an affidavit, and additional evidence relating to her receipt of the birth certificate.¹

Section 101(a)(15)(U)(ii) of the Act provides for derivative U nonimmigrant status for qualifying family members of U-1 nonimmigrants. In pertinent part, the regulation at 8 C.F.R. § 214.14(a)(10) defines a qualifying family member as: "in the case of an alien victim 21 years of age or older . . . the spouse or child(ren) of such alien." Regarding the admission of a qualifying family member, the regulation at 8 C.F.R. § 214.14(f) states, in pertinent part:

(1) *Eligibility.* . . . To be eligible for . . . U-3 [(child)] . . . nonimmigrant status, it must be demonstrated that:

(i) The alien for whom . . . U-3 . . . status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

(ii) The qualifying family member is admissible to the United States.

The petitioner filed a request for U nonimmigrant status and interim relief for herself and the beneficiary pending the publication of regulations implementing the U classification. On January 20, 2006 when the beneficiary was 11 years old, U.S. Citizenship and Immigration Services (USCIS) granted him interim relief in the form of deferred action. The petitioner filed a Form I-918, Petition for U Nonimmigrant Status, which was subsequently approved, granting her U-1 nonimmigrant status. The petitioner filed the instant Form I-918 Supplement A on the beneficiary's behalf on March 3, 2008. On April 14, 2010, the director denied the Form I-918 Supplement A because the

¹ Counsel submitted this additional evidence with a second Form I-290B marked as a motion to reopen and reconsider the director's decision. That motion is moot because this appeal was pending at the time the motion was filed and the director no longer had jurisdiction over the matter. See 8 C.F.R. §§ 103.3(a)(2)(iv), 103.5(a)(1)(ii).

document that the petitioner submitted to establish her relationship to the beneficiary did not contain the names of the parents and the petitioner did not submit the "long form" birth certificate that the director had requested on August 19, 2009. The director concluded that, without the "long form" birth certificate, the petitioner could not establish a parent/child relationship with the beneficiary.

The regulation at 8 C.F.R. § 214.14(f)(3)(i) provides that a Form I-918 Supplement A must include evidence demonstrating the relationship of a qualifying family member to a petitioner. As the record now includes a birth certificate for the beneficiary that lists the names of his parents, the petitioner has established that the beneficiary is her child. Therefore, the beneficiary meets the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10). Although the beneficiary previously submitted a Form I-192 waiver application, he is not inadmissible to the United States under the grounds stated in his application or any other sections of the Immigration and Nationality Act. He is, therefore, admissible to the United States as required by 8 C.F.R. § 214.14(f)(1)(ii). The beneficiary is accordingly eligible for U-3 nonimmigrant status pursuant to section 101(a)(15)(U)(ii)(II) of the Act.

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), (f)(5). Here, that burden has been met as to the beneficiary's eligibility for U-3 nonimmigrant status as a qualifying family member.

ORDER: The appeal is sustained. The Form I-918 Supplement A shall be approved.