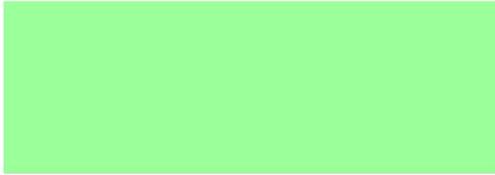
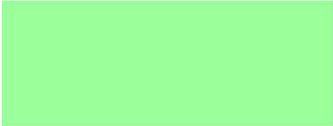


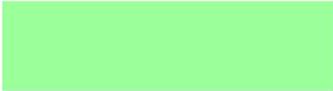
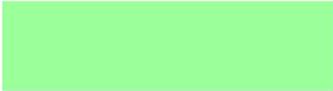


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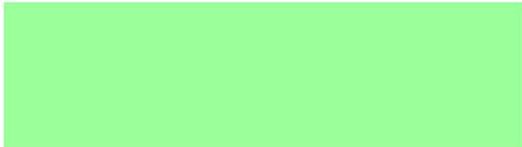


DATE: **AUG 25 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Principal Applicant:   
Derivative Beneficiary: 

APPLICATION: Application for Immediate Family Member of T-1 Recipient under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(ii).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the application for derivative T nonimmigrant status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks nonimmigrant classification of his daughter as the child of a victim of a severe form of trafficking in persons under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(T)(ii). The director denied the application because the beneficiary was already 21 years of age when her father’s Application for T Nonimmigrant Status (Form I-914) was filed. On appeal, counsel submits a brief and additional evidence.

*Applicable Law*

Section 101(a)(15)(T) of the Act provides for T-1 nonimmigrant classification of certain victims of a severe form of trafficking in persons and derivative classification of the spouse and children of an adult T-1 nonimmigrant. Section 101(a)(15)(T)(i),(ii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(T)(i),(ii)(II). For derivative children of T-1 nonimmigrants, the Act defines the term “child” as an unmarried person under 21 years of age. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1); 8 C.F.R. § 214.11(a) (defining “child” as a person described as such under section 101(b)(1) of the Act).

The regulation at 8 C.F.R. § 214.11(o) provides the following on the admission of immediate family members of an adult T-1 nonimmigrant:

(1) *Eligibility.* . . . (i) The alien for whom T–2, T–3, or T–4 status is being sought is an immediate family member of a T–1 nonimmigrant, as defined in paragraph (a) of this section, and is otherwise eligible for that status . . .

...

(3) *Contents of the application package for an immediate family member.* . . . (iv) Evidence demonstrating the relationship of an immediate family member, as provided in paragraph (o)(4) of this section . . .

(4) *Relationship.* The relationship must exist at the time the application for the T–1 nonimmigrant status was filed, and must continue to exist at the time of the application for T–2, T–3 . . . status and at the time of the immediate family member’s subsequent admission to the United States. If the T–1 principal alien proves that he or she became the parent of a child after the T–1 nonimmigrant status was filed, the child shall be eligible to accompany or follow to join the T–1 principal.

Section 214(o) of the Act provides, in pertinent part, the following age-out protection for a child derivative beneficiary under subsection 101(a)(15)(T)(ii)(II) of the Act:

(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 1101(a)(15)(T)(i) of this title, and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a

child for purposes of section 1101(a)(15)(T)(ii) of this title, if the alien attains 21 years of age *after* such parent's application was filed but while it was pending. . . [emphasis added].

#### *Pertinent Facts and Procedural History*

The record in this case provides the following pertinent facts. The beneficiary is a 23-year-old citizen and resident of the Philippines who was born on [REDACTED]. Her father, [REDACTED] filed a Form I-914 application for classification as a T-1 nonimmigrant on December 20, 2012, when the beneficiary was 21 years old. The beneficiary's father subsequently filed the instant Application for Immediate Family Member of T-1 Recipient (Form I-914, Supplement A) on behalf of the beneficiary on February 19, 2013. The director approved Mr. [REDACTED] Form I-914 on September 12, 2013. On September 25, 2013, the director denied the instant Form I-914, Supplement A because the beneficiary was already 21 years of age when her father's Form I-914 was filed.

On appeal, counsel submits a brief and the following evidence: a U.S. Department of State (DOS) cable on T and U visa changes; news reports and criminal records related to the applicant's traffickers; and evidence of the applicant's remittances to the Philippines.

We conduct appellate review on *a de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims and the additional evidence submitted on appeal do not overcome the director's determination. The appeal will be dismissed for the following reasons.

#### *Discussion*

Derivative T-3 classification is available to children who seek to accompany or follow to join adult T-1 nonimmigrant parents provided the children are unmarried and under 21 years of age on the date on which their parent filed the parent's Form I-914 application for T-1 classification. Section 101(a)(15)(T)(ii)(II), 101(b)(1) of the Act, 8 U.S.C. § 1101(a)(15)(T)(ii)(II), 1101(b)(1). *See also* 8 C.F.R. § 214.11(a) (defining the term "child" as a person described in section 101(b)(1) of the Act). The director correctly determined that since the beneficiary was 21 years old at the time her father filed his Form I-914, she is ineligible for derivative status under section 101(a)(15)(T)(ii)(II) of the Act as the child of a T-1 nonimmigrant.

On appeal, counsel asserts that the beneficiary will have no support if she remains in the Philippines and she may face retaliation from the agency that trafficked her father to the United States. Counsel requests that the beneficiary's eligibility for T nonimmigrant status be "considered under the expanded derivative status options, as they apply to adult children." Counsel, however, fails to identify any error of law or fact in the director's decision. Nor does she cite to any specific statutory or regulatory provisions that would allow the beneficiary to remain eligible for T-3 nonimmigrant status.

In 2013, Congress expanded eligibility for certain adult or minor children of derivative beneficiaries of T-1 nonimmigrants, but did not extend that benefit to adult derivative beneficiaries themselves. The amendment allows for the T-6 nonimmigrant classification of adult or minor children of a

derivative of a T-1 principal who face a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement. Section 101(a)(15)(T)(ii)(III) of the Act, 8 U.S.C. §1101(a)(15)(T)(ii)(III) (as amended by section 1221 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (Mar. 7, 2013)). Subsection 101(a)(15)(T)(ii)(II) of the Act, which pertains to the T-3 classification of children of T-1 nonimmigrants, however, was not amended by these changes. The age-out provisions of section 214(o) of the Act are also inapplicable to the beneficiary because she turned 21 years old before her father's T-1 application was filed.

As the beneficiary was already 21 years old at the time her father filed his Form I-914, she was no longer considered a "child" under section 101(b)(1) of the Act. The beneficiary is therefore ineligible for derivative status under subsection 101(a)(15)(T)(ii)(II) of the Act as the child of a T-1 nonimmigrant.<sup>1</sup>

*Conclusion*

In these proceedings, the principal applicant bears the burden to establish the derivative beneficiary's eligibility. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2), (o). Here, that burden has not been met and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> This decision is without prejudice to the adjudication of any future applications filed on behalf of the beneficiary as a T-6 derivative of a derivative of a T-1 nonimmigrant should the beneficiary's eligibility be established under the applicable statutory provisions.