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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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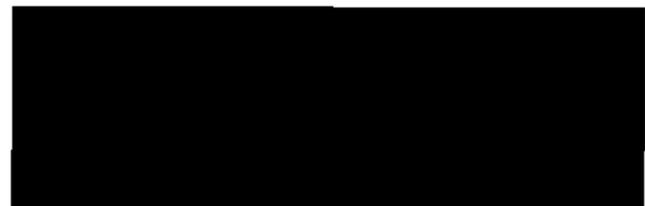
Office: VERMONT SERVICE CENTER Date:

DEC 15 2010

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 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 her sibling. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed and the matter remanded to treat the appeal as a motion to reconsider.

The petitioner seeks nonimmigrant classification of her sibling 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 Form I-918 Supplement A because the petitioner's brother did not meet the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10). According to the director, the petitioner's brother could not be classified as a qualifying family member because he was over the age of 18 when the petitioner filed the Form I-918 Supplement A on her brother's behalf. On appeal, counsel submits a brief.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an appeal received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued his decision on April 14, 2010. According to the date stamp on the Form I-290B Notice of Appeal or Motion, it was received by USCIS on May 18, 2010, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The regulation at 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy.

Review of the record indicates that the appeal meets the requirements of a motion to reconsider because the director made an error in denying the petition. According to section 101(a)(15)(U)(ii)(I) of the Act, the sibling of a U-1 nonimmigrant may derive U nonimmigrant status only if the U-1 nonimmigrant was under the age of 21 and the sibling was unmarried and under the age of 18 on the date on which the principal U-1 nonimmigrant filed his or her request for U nonimmigrant status. As stated in the preamble to the U nonimmigrant visa interim rule:

Which family members are considered “qualifying” depends on the age of the principal. If the principal is under 21 years of age, qualifying family members include . . . unmarried siblings under 18 years of age (on the filing date of the principal’s petition)

72 Fed. Reg. 53014, 53025 (Sept. 17, 2007).

In this case, the petitioner filed her request for interim relief pending publication of the implementing U regulations in October 2003, when she was 12 years old. On that date, the petitioner’s brother, who was born on December 14, 1987, was 15 years old and unmarried. The petitioner remained under 21 and her brother remained under 18 and unmarried at the time the petitioner was granted U interim relief on April 28, 2005. The petitioner was ultimately granted U-1 nonimmigrant status as of that date. *See* 8 C.F.R. § 214.14(c)(6). Therefore, the petitioner’s brother is a qualifying family member under section 101(a)(15)(U)(ii)(I) of the Act, because he was under the age of 18 and unmarried when the petitioner filed for U nonimmigrant status. Thus, the petitioner’s brother is eligible for U-5 nonimmigrant status as a qualifying family member of a U-1 nonimmigrant.¹

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 petitioner’s brother’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. *See Decision of the Director*, dated April 14, 2010. As the petitioner’s brother is eligible as a qualifying family member, the director should reconsider the denial of the Form I-192 on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5)(i), and enter a new decision on the Form I-918 Supplement A.

ORDER: The appeal is rejected as untimely filed and the matter remanded to the director to treat as a motion to reconsider. Because the beneficiary is statutorily eligible for derivative U nonimmigrant classification, the director should reconsider the Form I-192 and issue a new decision on the Form I-918 Supplement A.

¹ Our interpretation is consistent with USCIS policy, which acknowledges that “[m]any qualifying family members who were granted interim relief do not meet the general age requirements in the rule” and clarifies that:

If the qualifying family member was under 21 years of age at the time of U interim relief filing, USCIS will continue to consider such family member as a qualifying family member for purposes of U nonimmigrant status at the time the principal petitioner files Form I-918 and Form I-918, Supplement A, even if the family member is no longer under 21 years of age at the time of filing or adjudication.