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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



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FILE:



Office: VERMONT SERVICE CENTER Date: JUL 12 2010

IN RE:

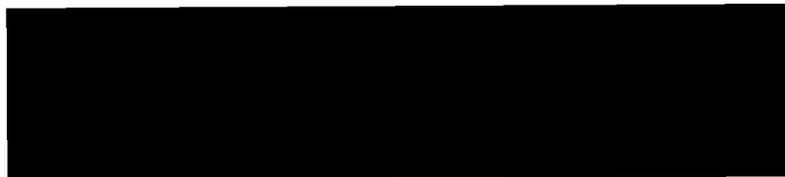
Petitioner:

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)

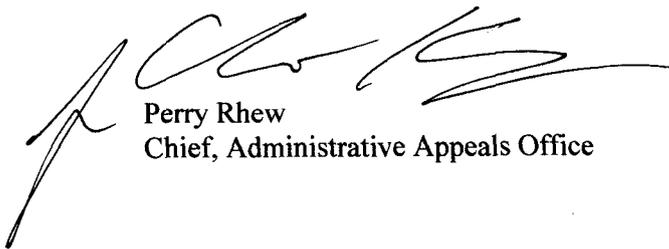
ON BEHALF OF PETITIONER:



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 sustained.

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 sister 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 sister could not be classified as a qualifying family member because she was over the age of 18 when the petitioner filed the Form I-918 Supplement A on her sister's behalf. On appeal, counsel submits a brief.

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)--

- (I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien[.]

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 under the age of 21 who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, *qualifying family member* means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien.



The record in this case provides the following pertinent facts and procedural history. On December 11, 2004, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On March 7, 2005, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action. On or about June 29, 2006, the petitioner filed a request for U nonimmigrant derivative status for her sister based upon amendments to section 101(a)(15)(U) of the Act that took effect pursuant to section 801(b)(2) of the *Violence Against Women and Department of Justice Reauthorization Act of 2005*, Pub. L. 109-162 (Jan. 5, 2006) (VAWA 2005). On December 1, 2006, USCIS granted the petitioner's sister interim relief in the form of deferred action, which was subsequently extended on January 28, 2008. On February 29, 2008, the petitioner filed a Form I-918, Petition for U Nonimmigrant Status, and on the same day she filed a Form I-918 Supplement A on behalf of her sister. On May 18, 2009, the petitioner's Form I-918 was approved, granting her U-1 nonimmigrant status from March 7, 2005 to May 17, 2010. On February 11, 2010, the petitioner's Form I-918 Supplement A was denied. The petitioner timely appealed.

On appeal, counsel states that the director's interpretation of the regulation at 8 C.F.R. § 214.14(a)(10) is in conflict with the Act and the legislative intent in enacting VAWA 2005. According to counsel, the director should have looked at the date that the petitioner initially applied for U nonimmigrant benefits to determine whether her sister was unmarried and under the age of 18 and, therefore could be classified as a qualifying family member. Counsel states that the director erroneously looked at the date that the petitioner filed the Form I-918 Supplement A on her sister's behalf to determine whether her sister met the age and marital status requirements.

Upon review of the record, we find that the beneficiary is eligible for U-5 nonimmigrant status as a qualifying family member of a U-1 nonimmigrant.<sup>1</sup> 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:

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<sup>1</sup> 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 principal petitioner was under 21 years of age at the time she or he filed for a parent(s) or unmarried sibling(s) under the age of 18, USCIS will continue to consider such parent(s) or sibling(s) as a qualifying family member for purposes of U nonimmigrant status at the time the principal files Form I-918 and Form I-918, Supplement A, even if the principal petitioner is no longer under 21 years of age at the time of filing or adjudication, *and even if the sibling is no longer under 18 years of age at the time of filing or adjudication.*



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. 179, 53014 - 42, 53025 (Sept. 17, 2007)

In this case, the petitioner filed her request for interim relief pending publication of the implementing U regulations on December 11, 2004, when she was 15 years old. On that date, the petitioner’s sister, who was born on May 27, 1987, was 17 years old and unmarried. The petitioner remained under 21 and her sister remained under 18 and unmarried at the time the petitioner was granted U interim relief on March 7, 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 sister is a qualifying family member under section 101(a)(15)(U)(ii)(I) of the Act, because she was under the age of 18 and unmarried when the petitioner filed for U nonimmigrant status. Accordingly, we withdraw the director’s decision to contrary.

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 petitioner’s sister’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 petitioner’s sister’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 Feb. 11, 2010. 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). As the sole ground for denial of the petitioner’s sister’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 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.

