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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
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date:

NOV 10 2010

IN RE:

Petitioner:

Beneficiary

PETITION: Petition for Qualifying Family Member of 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the Petition for Qualifying Family Member of U-1 Recipient. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification for 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-1 recipient.

The director found that the petitioner's daughter was not a qualifying family member because she is married. On appeal, the petitioner contends through counsel that her daughter's age and marital status should be determined at the time she filed for U interim relief, not at the time of U visa adjudication. Because the petitioner's daughter was under 21 years of age and unmarried at the time the petitioner filed for U interim relief, the petitioner contends that her daughter meets the criteria for a qualifying family member.

Applicable Law

Section 101(a)(15)(U)(ii) of the Act permits certain qualifying family members who are accompanying or following to join the alien victim of a qualifying crime to obtain U nonimmigrant classification. Specifically, an individual who has petitioned for or has been granted U-1 nonimmigrant status as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act

may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. . . . To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:

- (i) The alien for whom U-2, U-3, U-4, or U-5 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.

8 C.F.R. § 214.14(f)(1). In the case of an alien victim of a qualifying crime who is 21 years of age or older, qualifying family members are defined as the spouse or children of such alien. Section 101(a)(15)(U)(ii)(II) of the Act; 8 C.F.R. § 214.14(a)(10).

Generally, in order to be considered a qualifying family member,

the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to

exist at the time Form I-918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.

8 C.F.R. § 214.14(f)(4).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4), (f)(5). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The record reflects that the beneficiary is a 23-year-old native and citizen of Mexico. On or around April 20, 2005, the petitioner filed a request for U interim relief as a victim of substantial physical and mental abuse as a result of aggravated battery and assault by her husband. The petitioner requested derivative relief for three of her children, including the beneficiary, who was 18 years old at the time of the application. The beneficiary married a U.S. citizen on May 17, 2006. USCIS granted deferred action to the beneficiary on September 25, 2006, which, after extensions, remained in effect until August 9, 2010.

The petitioner filed a Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, on behalf of the beneficiary on October 1, 2009. USCIS granted U nonimmigrant classification to the petitioner on March 2, 2010. On March 10, 2010, the director denied the petitioner's Form I-918 Supplement A, finding that the beneficiary did not meet the definition of a "child." The petitioner timely appealed.

Analysis

On appeal, the petitioner contends that her daughter meets the definition of a qualifying family member because she was under 21 years of age and unmarried at the time she filed for U interim relief in 2005.

Because the petitioner is an alien victim of a qualifying crime who is 21 years of age or older, her qualifying family members are defined as her spouse or children. Section 101(a)(15)(U)(ii)(II) of the Act; 8 C.F.R. § 214.14(a)(10). Under section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), the term child is defined in pertinent part as "an unmarried person under twenty-one years of age. . .". According to the regulations, in order to be considered a qualifying family member, the relationship between the petitioner and the beneficiary generally must exist at the time Form I-918 is filed, and must continue to exist at the time of adjudication and admission. 8 C.F.R. § 214.14(f)(4). Otherwise, the family member would not meet the definition of a qualifying family member at section 101(a)(15)(U)(ii) of the Act. *See* 72 Fed. Reg. 53025 (Sep. 17, 2007) (explaining eligibility

requirements for derivative family members)

USCIS has provided age-out protection for qualifying family members who were granted interim relief, such that the family member's age on the date of the U interim relief filing shall be controlling for the age eligibility requirement. However, no such exception exists for the marital status of the family member. Here, because the beneficiary is married, she does not meet the definition of a "child" under section 101(b)(1) of the Act, and therefore cannot meet the definition of a qualifying family member for purposes of U nonimmigrant visa classification.

Conclusion

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, the petitioner has not met her burden of establishing that her daughter meets the definition of a qualifying family member under section 101(a)(15)(U)(ii) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.