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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

PUBLIC COPY

[Redacted]

D14

FILE: [Redacted]

Office: VERMONT SERVICE CENTER Date:

NOV 18 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

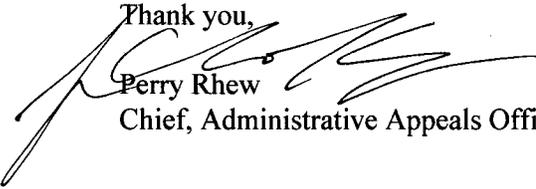
ON BEHALF OF PETITIONER:

[Redacted]

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 (Form I-918 Supplement A). 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 determined that the beneficiary was not eligible for classification as a qualifying family member of a U-1 recipient because the petitioner's Petition for U Nonimmigrant Status (Form I-918), was denied. The Form I-918 Supplement A was denied accordingly. On appeal, the petitioner contends through counsel that if her Form I-918 is sustained on appeal, the Form I-918 Supplement A filed on behalf of her daughter should be granted.

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 derivative 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). 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. . .".

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), (f)(5) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The record reflects that the beneficiary was born in Mexico on [REDACTED] 1990, to the petitioner [REDACTED] and her husband [REDACTED]. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on February 18, 2009, claiming that she was a victim of criminal activity involving obstruction of justice, witness tampering, and forgery in violation of Texas law. The petitioner also filed a Form I-918 Supplement A on behalf of her daughter. The director denied the Form I-918 finding that the petitioner did not establish that she was a victim of a qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The director also denied the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), on the basis of the denial of the Form I-918.

On May 27, 2010, the director determined that the beneficiary did not meet the eligibility criteria for a qualifying family member because the petitioner's request for U nonimmigrant classification had been denied. The director denied the Form I-918 Supplement A, and the petitioner filed this timely appeal.

Analysis

The petitioner appealed the denial of her Form I-918. On appeal, the AAO determined that the petitioner did not meet her burden of showing eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i)(I) of the Act, and dismissed her appeal. Accordingly, the beneficiary is not eligible for nonimmigrant classification as a qualifying family member of a U-1 recipient under section 101(a)(15)(U)(ii) of the Act, and this appeal will be dismissed.

ORDER: The appeal is dismissed.