

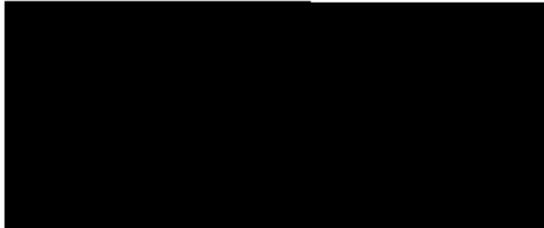
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER Date:

OCT 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.

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, 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 dismissed.

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.

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 matter provides the following pertinent facts and procedural history. On July 3, 2006, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On August 11, 2006, United States Citizenship and Immigration Services (USCIS) notified the petitioner that it had received her "preliminary application for U-nonimmigrant status." USCIS requested further evidence in order to process the application for interim relief. The record does not contain any evidence that the petitioner responded to the director's request for additional documentation. On November 7, 2008, the petitioner filed her petition, using Form I-918, Petition for U Nonimmigrant Status, and included an updated law enforcement agency certification and biographical data, information that had been requested by the director in his August 11, 2006 letter. On March 2, 2010, the petitioner's Form I-918 was approved, granting her U-1 nonimmigrant status from January 6, 2010 to January 5, 2014. On or about February 23, 2009, the petitioner filed a Form I-918 Supplement A on behalf of her brother. The petitioner's brother's date of birth is August 24, 1988. On February 25, 2010, the petitioner's Form I-918 Supplement A on behalf of her brother was denied. The petitioner timely appealed.

On appeal, counsel asserts that the petitioner's initial filing on July 3, 2006 locked in her brother's age for purposes of establishing eligibility of his derivative status. Counsel further asserts that the petitioner's initial filing on July 3, 2006 was accompanied by substantial evidence, including her medical records and criminal court records demonstrating the prosecution of her assailant, as well as news clippings of the case and a letter from an assistant district attorney certifying the petitioner's cooperation in the prosecution of her assailant. Counsel contends that the petitioner's initial request for U nonimmigrant status was properly filed, absent governing regulations, because it was received in a USCIS office, it was signed and executed, and the required filing fee was attached or a waiver of the fee had been granted and that any deficiencies in the initial filing were subsequently cured by the Form I-918 filed pursuant to the regulations. Thus, according to counsel, the director should have looked at the date that the petitioner initially requested interim relief pending the publication of regulations implementing the U classification to determine whether her brother was unmarried and under the age of 18 and, therefore, could be classified as a qualifying family member. Counsel avers that the director erroneously looked at the dates that the petitioner filed the Form I-918 (on November 7, 2008) and filed the Form I-918 Supplement A on her brother's behalf (on February 23, 2009) to determine whether her brother met the age and marital status requirements.

Upon review of the record, we find that the beneficiary is not eligible for U-5 nonimmigrant status as a qualifying family member of a U-1 nonimmigrant. 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. 179, 53014 - 42, 53025 (Sept. 17, 2007)

In this matter, although the petitioner submitted a request for interim relief pending publication of the implementing U regulations on or about July 3, 2006, her request did not include a law enforcement agency certification that was signed within six months of the request and did not include necessary biographical information. The director requested the missing information but it was not provided. The term *U interim relief* refers to interim benefits provided by USCIS to petitioners for U nonimmigrant status who requested such benefits and who were deemed *prima facie* eligible for U nonimmigrant status prior to the publication of the implementing regulations. 8 C.F.R. § 214.14(a)(13). The director’s issuance of a request for additional evidence on July 6, 2006 establishes that the petitioner was not *prima facie* eligible for U nonimmigrant status. Interim relief was, therefore, never granted to the petitioner. The petitioner filed the Form I-918 U petition on November 7, 2008, at which time she was still under 21 years of age; however her brother, the derivative beneficiary in this matter, was over the age of 18. Therefore, the petitioner’s brother is not a qualifying family member under section 101(a)(15)(U)(ii)(I) of the Act, because he was over the age of 18 when the petitioner filed for U nonimmigrant status on November 7, 2008.¹

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 not been met as to the petitioner’s brother’s statutory eligibility for U nonimmigrant status as a qualifying family member.

ORDER: The appeal is dismissed.

¹ The qualifying family member’s age on the date of the U interim relief filing is controlling for the age eligibility requirements only for those family members who were granted interim relief. See *New Classification for Victims of Criminal Activity – Eligibility for “U” Nonimmigrant Status*, USCIS Memorandum, 1, 14 (Mar. 27, 2008).