

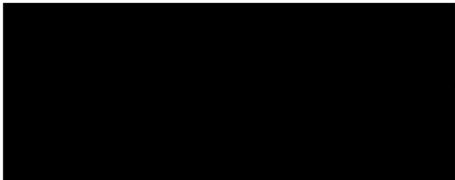
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D14

FILE:



Office: VERMONT SERVICE CENTER Date: **SEP 21 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 daughter. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks nonimmigrant classification of 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 nonimmigrant.

The director denied the Form I-918 Supplement A because the petitioner's daughter 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 daughter could not be classified as a qualifying family member because she was over the age of 21 when the petitioner filed the Form I-918 Supplement A on her daughter'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)--

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse, children 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 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, [qualifying family member] means the spouse or child(ren) of such alien.

The record in this matter provides the following pertinent facts and procedural history. On or about November 22, 2002, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On November 24, 2003, United States Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action. On April 27, 2006 and again on July 23, 2007, USCIS granted the petitioner interim relief by extending the deferred action. On April 8, 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 daughter. On June 2, 2009, the petitioner's Form I-918 was approved, granting her U-1 nonimmigrant status from October 23, 2003 to May 17, 2010. On February 2, 2010, the petitioner's Form I-918 Supplement A on behalf of her daughter 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 daughter was unmarried and under the age of 21, thus qualified as a "child" of the petitioner that 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 daughter's behalf to determine whether her daughter met the age and marital status requirements.

Upon review of the record, we find that the beneficiary is eligible for U-3 nonimmigrant status as a qualifying family member of a U-1 nonimmigrant. According to section 101(a)(15)(U)(ii)(II) of the Act, the child of a U-1 nonimmigrant may derive U nonimmigrant status. A "child" is defined at section 101(b) of the Act, in part, as "an unmarried person under twenty-one years of age . . . ." In this matter, the petitioner filed her request for interim relief pending publication of the implementing U regulations on or about November 22, 2002. The beneficiary in this matter, who is the petitioner's daughter, was born January 30, 1985. Thus, when the petitioner initially requested interim relief on or about November 22, 2002, the petitioner's daughter was 17 years old and unmarried. When the petitioner was granted interim relief on November 24, 2003, the petitioner's daughter remained a child, as defined at section 101(b)(1) of the Act, as she was unmarried and under the age of 21. The petitioner was ultimately granted U-1 nonimmigrant status as of October 23, 2003. Therefore, the petitioner's daughter is a qualifying family member under section 101(a)(15)(U)(ii)(II) of the Act, because she was under the age of 21 and unmarried when the petitioner filed for U nonimmigrant status.<sup>1</sup> Accordingly, we withdraw the director's decision to the contrary.

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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:

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. Here, that burden has been met as to the petitioner's daughter'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 matter, the director denied the petitioner's daughter'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 February 2, 2010. The AAO has 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 daughter'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, this matter 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.

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If the qualifying family member was under 21 years of age at the time of the 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.*

*New Classification for Victims of Criminal Activity – Eligibility for “U” Nonimmigrant Status*, USCIS Memorandum, 1, 14 (Mar. 27, 2008) (emphasis added).