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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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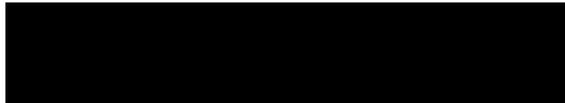


Office: VERMONT SERVICE CENTER Date:

SEP 23 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, with a fee of \$585. 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

[REDACTED]

DISCUSSION: The Director, Vermont Service Center, denied the petitioner's Form I-918 Supplement A, 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 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 matter provides the following pertinent facts and procedural history. On November 19, 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 older sister. The petitioner's Form I-918 was approved on March 22, 2010. The petitioner's date of birth is [REDACTED] thus she was 15 when the Form I-918 was filed. The beneficiary was born on [REDACTED] and was 30 years old when the petitioner filed the Form I-918 and the Supplement A. On December 11, 2010, the petitioner's Form I-918 Supplement A was denied. The petitioner timely appealed.

On appeal, counsel asserts that the beneficiary in this matter is the petitioner's older sister and "next friend." Counsel contends that the beneficiary in this matter is the petitioner's sole caretaker and guardian in the United States. Counsel notes that the petitioner's parents do not live in the United States. Counsel acknowledges that the statute does not explicitly state that a "next friend" can be a derivative on a child victim's U visa petition, but urges United States Citizenship and Immigration Services (USCIS) to allow the beneficiary to be a derivative on the petitioner's application as the petitioner has no other person in the United States to support her.

The record in this matter includes the following documentation regarding the beneficiary's role as the petitioner's caregiver:

- An "In Home Family Services Agreement" issued by the North Carolina Division of Social Services, dated November 12, 2007. The beneficiary in this matter is identified as the caregiver of the petitioner and of the beneficiary's United States citizen child.
- An October 9, 2008 letter from the Director of Student Placement acknowledging that the beneficiary has been appointed the petitioner's caregiver and instructing the caregiver to enroll the petitioner in school.
- A document allegedly signed by the petitioner's mother on August 20, 2007 appointing the beneficiary power of attorney to act in her stead in all matters relating to the petitioner.

Upon review of the record, we do not find that the beneficiary is 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, the petitioner filed her Form I-918 petition on November 19, 2008, when she was 15 years old. On that date, the petitioner’s sister, who was born on [REDACTED] although unmarried was over the age of 18. While an individual who meets the definition of “next friend” at 8 C.F.R. § 214.14(a)(7) may assist a U nonimmigrant petitioner in meeting the requirements of sections 101(a)(15)(U)(i)(II) and (II) of the Act, a next friend is not included as a qualifying family member at section 101(a)(15)(U)(ii) of the Act. There is no statutory basis for the petitioner’s older sister to qualify as a derivative on the petitioner’s U visa petition, as the sister was over the age of 18 when the petitioner filed for U nonimmigrant classification.

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

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.