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

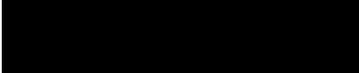
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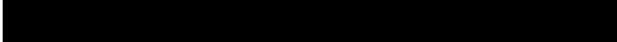
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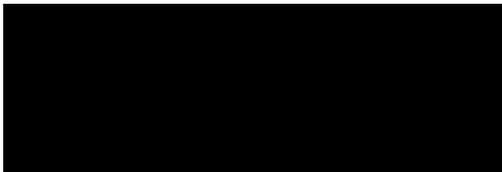
FILE:  Office: VERMONT SERVICE CENTER Date:

JAN 12 2011

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 \$630. 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 son. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification of her son 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 nonimmigrant.

The director denied the Form I-918 Supplement A because the beneficiary is married and, therefore, he no longer meets the definition of a child at section 101(b)(1) of the Act. On appeal, counsel submits a brief and an affidavit from the beneficiary.

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 and 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 . . . the spouse or child(ren) of such alien.

Regarding the admission of a qualifying family member, the regulation at 8 C.F.R. § 214.14(f)(1) states, in pertinent part:

To be eligible for . . . U-3 [(child)] . . . nonimmigrant status, it must be demonstrated that:

- (i) The alien for whom . . . U-3 . . . 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.

* * *

Regarding the definition of a *child*, section 101 of the Act states, in pertinent part:

(b) As used in titles I and II-

- (1) The term "child" means an unmarried person under twenty-one years of age

The record in this case provides the following pertinent facts and procedural history. In or about March 2005, the petitioner filed a request for U nonimmigrant status for herself and the beneficiary, pending the publication of regulations implementing the U classification. On June 22, 2005, U.S. Citizenship and Immigration Services (USCIS) granted the beneficiary interim relief in the form of deferred action. On April 10, 2008, the petitioner filed a Form I-918 Supplement A on behalf the beneficiary. In early 2010, the petitioner was granted U-1 nonimmigrant status.

When filing the Form I-918 Supplement A, the petitioner indicated that the beneficiary was married and had three children. In his denial decision, the director stated that the beneficiary did not meet the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10) because he was married.

On appeal, counsel states that because the beneficiary had his deferred action extended over several years, USCIS should now not disqualify him as a qualifying family member since USCIS has been aware of his marital status all along. Counsel notes that when the beneficiary was initially granted interim relief in June 2005, he was already married, and that he has always truthfully indicated his marital status in his applications for work authorization throughout the years. Counsel refers to a March 27, 2008 USCIS Memorandum¹ regarding the U nonimmigrant classification and states that the policy interpretation that was implemented to rectify the problem of derivatives aging out should be extended to marital status as well.

The statute and regulations permit no exception to the requirement that the beneficiary meet the definition of a qualifying family member and we lack authority to waive the requirements of the statute and the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that

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

government officials are bound to adhere to the governing statute and regulations). Regarding counsel's claims concerning USCIS's awareness of the beneficiary's marital status when granting him deferred action, we note that the beneficiary was initially granted deferred action in June 2005 prior to the publication of the regulations to implement the U nonimmigrant visa category. A grant of U interim relief only established *prima facie* eligibility for U nonimmigrant classification pending publication of the implementing regulations. 8 C.F.R. § 214.14(a)(13). The grant of U interim relief does not, in itself, establish the beneficiary's eligibility for U nonimmigrant classification or bind USCIS to approve the Form I-918 Supplement A that was filed on his behalf. *See* 8 C.F.R. § 214.14(c)(4) (USCIS is not bound by its prior factual determinations and will determine in its sole discretion the evidentiary value of previously submitted evidence). *See also* Preamble to the U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53014, 53026 (noting that a grant of interim relief "does not constitute a binding determination that any given eligibility requirement had been proven.").

The relationship between a petitioner and the qualifying family member must exist not only at the time a Form I-918 (or an earlier request for interim relief) was filed, but "must continue to exist at the time Form I-918, Supplement A is adjudicated . . ." 8 C.F.R. § 214.14(f)(4). Once married, a son or daughter ceases to be considered a child under section 101(b)(1) of the Act. Accordingly, as the beneficiary was married in 2002 at the age of 17, he does not meet the definition of a child and cannot be classified as a qualifying family member at 8 C.F.R. § 214.14(a)(10). We find no error in the director's decision.

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, that burden has not been met as to the petitioner's son's eligibility for U-3 nonimmigrant status as a qualifying family member (child).

ORDER: The appeal is dismissed. The Form I-918 Supplement A remains denied.