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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
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Services



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DATE:

MAY 11 2011

Office: VERMONT SERVICE CENTER

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IN RE:

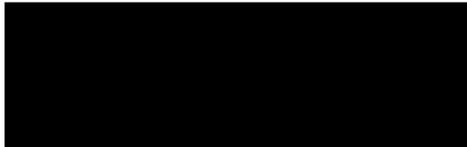
Petitioner:

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:

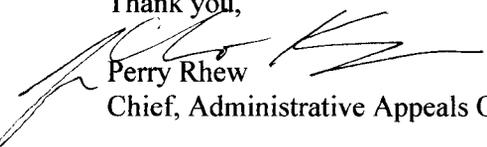


INSTRUCTIONS:

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, denied the Petition for Qualifying Family Member of a 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 and the petition will remain denied.

The petitioner, through counsel, seeks nonimmigrant classification of her mother 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 petitioner was deceased at the time the Form I-918 Supplement A was filed. On appeal, counsel submits a brief and a copy of a Form I-918, Petition for U Nonimmigrant Status, indicating the beneficiary as the petitioner.

Applicable Law

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[.]

Regarding the admission of a qualifying family member, the regulation at 8 C.F.R. § 214.14(f)(4) states, in pertinent part:

Relationship. Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, 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.

Facts and Procedural History

In or about August 2004, the petitioner, who is now deceased, filed a request for U nonimmigrant status for herself and her mother, who is the beneficiary, pending the publication of regulations implementing the U classification. On November 27, 2004, U.S. Citizenship and Immigration Services (USCIS) granted the beneficiary interim relief in the form of deferred action. In or about February 2008, the petitioner died. On April 9, 2008, a Form I-918 Supplement A was filed on behalf of the beneficiary. On the Form I-918 Supplement A, counsel indicated that the petitioner had passed away and the beneficiary was signing the form on her daughter's behalf because her daughter was a minor at the time of her death.

The director denied the petition because the petitioner had died prior to the proper filing of the Form I-918 Supplement A.¹ On appeal, counsel states that the beneficiary should not be penalized for USCIS's delay in implementing the U nonimmigrant visa regulations. Counsel notes that the beneficiary had been granted deferred action since 2004 and had USCIS acted more swiftly in publishing the U nonimmigrant visa regulations, the petitioner would have certainly submitted a petition for herself and one for the beneficiary prior to her death. Counsel refers to a March 27, 2008 USCIS Memorandum² regarding the U nonimmigrant classification and states that the policy interpretation that was implemented to rectify the problem of derivatives aging out should also apply when a petitioner dies, as the beneficiary would have otherwise met the requirements at section 101(a)(15)(U) of the Act had her daughter not passed away. Counsel states further that the beneficiary qualifies as an indirect victim pursuant to 8 C.F.R. § 214.14(a)(14)(i) because, as a minor, the petitioner was legally incompetent when the criminal activity occurred and her death leaves her permanently incapacitated. Finally, counsel submits a copy of her Form I-918 U petition, which the director denied on November 10, 2010.

The Beneficiary is Not a Qualifying Family Member

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). In this matter, the petitioner was deceased before Form I-918 Supplement A was filed and, therefore, no qualifying relationship existed when the Form I-918 Supplement A was adjudicated.

¹Subsequent to the denial of the Form I-918 Supplement A, the petitioner filed a Form I-918, Petition for U Nonimmigrant Status on July 16, 2010 that was denied because it was not accompanied by the required law enforcement certification (Form I-918 Supplement B). The petitioner did not appeal the denial of the Form I-918 U petition.

² *New Classification for Victims of Criminal Activity – Eligibility for "U" Nonimmigrant Status*, USCIS Memorandum, 1, 14 (Mar. 27, 2008)

Regarding counsel's claims concerning the delay in promulgating the regulations, we recognize the unfortunate timing of the petitioner's death and its impact upon the beneficiary and her pursuit of U nonimmigrant status. Although the beneficiary was granted interim relief and continued to have her deferred action status extended even after the petitioner's death, 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 did not, in itself, establish the beneficiary's eligibility for derivative U nonimmigrant classification or bind USCIS to approve the Form I-918 Supplement A. *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 (Sept. 17, 2007) (noting that a grant of interim relief "does not constitute a binding determination that any given eligibility requirement had been proven.").

On appeal, counsel submits a copy of the beneficiary's Form I-918 U petition and asserts that the beneficiary qualifies for U-1 nonimmigrant status on her own because she was an indirect victim of the criminal activity perpetrated against her daughter. The beneficiary did not appeal the denial of her Form I-918 U petition and we lack jurisdiction to review the director's decision on that case. *See* 8 C.F.R. §§ 103.3, 103.5(a)(1)(ii).

Conclusion

At the time the instant petition was filed and adjudicated, the petitioner had died and the beneficiary was no longer a qualifying family member, as defined 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 mother's eligibility as a qualifying family member .

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