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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

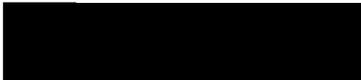


U.S. Citizenship  
and Immigration  
Services



B14

Date: **APR 23 2012** Office: VERMONT SERVICE CENTER FILE: 

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)

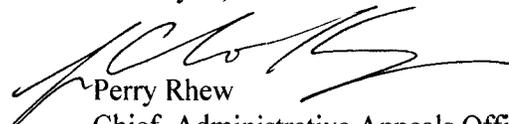
ON BEHALF OF PETITIONER: Self-represented

**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 Petition for U Nonimmigrant Status (Form I-918 U petition) 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 the beneficiary. 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 the beneficiary 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 does not meet the definition of a child at section 101(b)(1) of the Act. On appeal, the petitioner submits the Notice of Appeal (Form I-290B) and a letter.

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 who is-

....

(E) (i) a child adopted while under the age of sixteen years. . .

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Pertinent Facts and Procedural History*

On June 29, 2010, the petitioner concurrently filed the Form I-918 U petition and the Form I-918 Supplement A on behalf the beneficiary.<sup>1</sup> On December 13, 2010 and April 13, 2011, the director issued requests for further evidence (RFE) in regard to the Form I-918 Supplement A, to which the petitioner timely responded. On April 9, 2011, the petitioner was granted U-1 nonimmigrant status. On June 6, 2011, the director denied the Form I-918 Supplement A because the beneficiary did not meet the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10). The petitioner timely appealed the denial of the Form I-918 Supplement A.

#### *Analysis*

On appeal, the petitioner states that she has been the beneficiary's legal guardian since she was three years old. The petitioner states that the beneficiary knows her as her mother and that it is in the beneficiary's best interests to remain with her as she has no other living relatives. She states that she has begun to investigate the process of adopting the beneficiary.

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<sup>1</sup> The petitioner also filed a Form I-918 Supplement A on behalf of her biological child, which was approved.

The beneficiary is the natural child of [REDACTED] and an unnamed father. *See Birth Certificate*. The petitioner and her spouse were granted joint custody and guardianship of the beneficiary by the High Court of South Africa on December 6, 2005; however, there is no evidence in the record to establish that the petitioner has adopted the beneficiary. As such, the beneficiary does not meet the definition of a child at section 101(b)(1) of the Act and is ineligible for classification as a qualifying relative of the petitioner.

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 beneficiary'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.

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<sup>2</sup> Name withheld to protect identity of individual.