

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

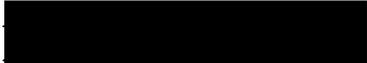
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

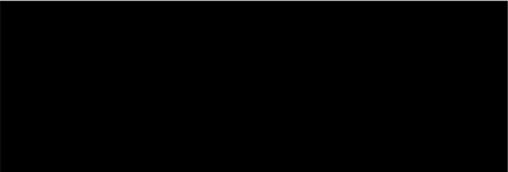
D14



Date: FEB 21 2012 Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary:

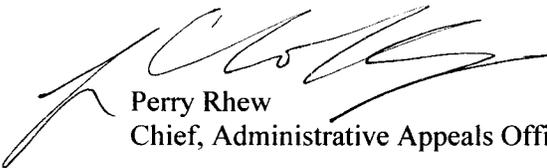
PETITION: Petition for U Nonimmigrant Classification for a Qualifying Family Member of a U-1 Recipient Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

ON BEHALF OF PETITIONER:  


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 his sibling. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter returned to the director for further action in accordance with the following decision.

The petitioner seeks nonimmigrant classification of his 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.

*Applicable Law*

Section 101(a)(15)(U)(i) of the Act provides for U nonimmigrant classification to alien victims of certain qualifying criminal activity who assist law enforcement officials in their investigation or prosecution of the qualifying crime(s). Section 101(a)(15)(U)(ii) of the Act provides derivative U nonimmigrant classification for qualifying family members defined as, in pertinent part:

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 . . . .

8 U.S.C. § 1101(a)(15)(U)(ii) (emphasis added).

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 . . . unmarried siblings under the age of 18 of such an alien.

The regulation at 8 C.F.R. § 214.14(f) which governs qualifying family members who are accompanying for following to join the U-1 nonimmigrant, states, in pertinent part:

(f) *Admission of qualifying family members - (1) Eligibility.* An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member in a . . . U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. . . . To be eligible for . . . U-5 nonimmigrant status, it must be demonstrated that:

(i) The alien for whom . . . U-5 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.

*Factual and Procedural History*

On February 16, 2010 when he was 18 years old, the petitioner filed a Form I-918 U petition. The beneficiary was 17 years old at the time. On December 20, 2010, U.S. Citizenship and Immigration Services (USCIS) approved the petitioner's Form I-918 U petition, granting him U-1 nonimmigrant status. On January 24, 2011, the petitioner filed the instant Form I-918 Supplement A on the beneficiary's behalf. At that time, the beneficiary was 18 years old. The director denied the Form I-918 Supplement A because the petitioner's sibling, who was over the age of 18 when the Form I-918 Supplement A was filed, did not meet the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10). On appeal, the petitioner submits a statement in which he asserts that the beneficiary met the applicable age requirements and should be deemed a qualifying family member. Counsel indicated on the Notice of Appeal (Form I-290B) that he would submit a brief by April 28, 2011; however, the record does not contain any such brief or supplemental evidence.

*Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the record, we 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 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, 53025 (Sept. 17, 2007).

The director committed an error when looking at the beneficiary's age as of the filing date of the Form I-918 Supplement A. The regulation at 8 C.F.R. § 214.14(a)(10) cited by the director is not disqualifying, as it does not state that the age requirement must be met when the Form I-918 Supplement A is filed. As noted above, the statute describes qualifying family members of a U-1 nonimmigrant, in part, as unmarried siblings under 18 years of age on the date on which the U-1 nonimmigrant applied for status under section 101(a)(15)(U)(i) of the Act. Here, when the petitioner filed his Form I-918 U petition, the beneficiary was 17 years old and unmarried. The beneficiary is therefore a qualifying family member under section 101(a)(15)(U)(ii)(I) of the Act because he met

both the age and marital status requirements when the petitioner filed for U-1 nonimmigrant status. Accordingly, we withdraw the director's decision.

The regulation at 8 C.F.R. § 214.14(f)(1)(ii) requires qualifying family members to establish their admissibility to the United States. In this case, the beneficiary filed an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) on January 24, 2011, which the director denied on February 25, 2011 solely on the basis of the denial of the Form I-918 Supplement A. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 Supplement A. 8 C.F.R. § 212.17(b)(3). However, as the sole ground for denial of the beneficiary's Form I-192 has been overcome on appeal, we will return the matter to the director for reconsideration of the Form I-192 and the entry of a new decision on the Form I-918 Supplement A.

**ORDER:** The director's decision is withdrawn. Because the beneficiary is statutorily eligible for U-5 nonimmigrant classification, the case is returned to the director for reconsideration of the Form I-192 and the issuance of a new decision on the Form I-918 Supplement A, which if adverse, shall be certified to the AAO for review.