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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**

D14



Date: **JUN 14 2012** Office: VERMONT SERVICE CENTER FILE:  (Petitioner)
(Beneficiary)

IN RE: Petitioner: 
Beneficiary:

PETITION: Petition 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)

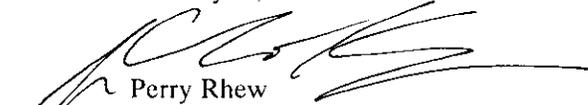
ON BEHALF OF PETITIONER:



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

██████████ (Petitioner)
██████████ (Beneficiary)

Page 2

DISCUSSION: The Director, Vermont Service Center (the director), approved the petitioner's U-1 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 the beneficiary. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The petitioner seeks nonimmigrant classification of the beneficiary, 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.

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) –
- (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[.]

See also 8 C.F.R. § 214.14(a)(10) (defining qualifying family members as the spouse and child(ren) of adult U nonimmigrants). Section 101(b)(1) of the Act defines the term "child," in part, as "an unmarried person under twenty-one years of age." To be eligible for derivative status, the beneficiary must be a "qualifying family member," which means that "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. 8 C.F.R. § 214.14(f)(4).

On October 1, 2010, the petitioner filed a Form I-918, Petition for U Nonimmigrant Status, which U.S. Citizenship and Immigration Services (USCIS) approved on May 12, 2011, granting the petitioner U-1 nonimmigrant status from that date until May 11, 2015. The beneficiary was born on ██████████ and turned 21 on ██████████. The director concluded that the petitioner filed the Form I-918 Supplement A on April 25, 2011, one day after the beneficiary's twenty-first birthday, and he was therefore ineligible to be classified as a qualifying family member. The director also noted that the beneficiary did not submit a copy of a valid passport to demonstrate his admissibility to the United States.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i), which discusses receipt dates: "[A] benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format. The receipt date shall be recorded upon receipt by USCIS." According to the evidence in the record, the Vermont Service Center received the Form I-918 Supplement A on April 22, 2011, two days prior to the beneficiary's twenty-first birthday, not April 25, 2011 as the director claimed. As the petitioner has shown that she filed



Page 3

the Form I-918 Supplement A prior to the beneficiary's twenty-first birthday, the director's decision is withdrawn.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, consistent with section 101(a)(15)(U)(ii) of the Act and the regulations at 8 C.F.R. § 212.14(f) regarding the admission of qualifying family members.