

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: **MAR 29 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition 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 (“the director”), 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 the beneficiary. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The Form I-918 Supplement A 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.

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) –
- (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, at the time the Form I-918A is filed, “a qualifying family member.” 8 C.F.R. § 214.14(f)(1)(i).

Factual and Procedural History

On November 3, 2010, the petitioner filed a Form I-918, Petition for U Nonimmigrant Status, which U.S. Citizenship and Immigration Services (USCIS) approved on April 5, 2011, granting the petitioner U-1 nonimmigrant status from March 22, 2011 until March 21, 2015. On November 8, 2010, the petitioner filed a Form I-918 Supplement A on behalf of the beneficiary. The beneficiary had turned 21 years old on November 6, 2010. The director denied the Form I-918 Supplement A because the beneficiary was already over the age of 21 when the petition on his behalf was filed and he, therefore, no longer met the definition of a child. On appeal, the petitioner through counsel states that the Vermont Service Center received the Form I-918 Supplement A on the first business day after the beneficiary turned 21 and the petition was accordingly timely filed.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's assertions on appeal fail to establish that the Form I-918A petition was filed while the beneficiary met the definition of a child at section 101(b)(1) of the Act.

USCIS records indicate that the Vermont Service Center received the Form I-918 Supplement A on November 8, 2010, two days after the beneficiary turned 21. Counsel states that where a filing deadline occurs on a Saturday, Sunday or legal holiday, USCIS regulations allow for an application or petition to be considered timely filed if it is received by USCIS by the end of the next day that is not a Saturday, Sunday or legal holiday. Counsel cites the regulation at 8 C.F.R. § 1.1 concerning the definition of "day," the regulation regarding filing deadlines of asylum applications at 8 C.F.R. § 208.4(a)(2)(ii), as well as guidance in the Adjudicators' Field Manual (AFM) at Chapter 22.2(b)(3)(F)(ii), which relates to employment-based petitions. Counsel also notes that an appeal is filed timely if the last day of the filing period falls on a Saturday, Sunday, or legal holiday.

Counsel's assertions on appeal fail to demonstrate that the director's denial decision was in error. The regulation at 8 C.F.R. § 1.1(h) states:

The term "day" when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday. (Emphasis added).

The regulation at 8 C.F.R. § 1.1(h) that counsel relies upon to establish that the Form I-918 Supplement A was filed before the beneficiary's twenty-first birthday applies only to filing deadlines as described in Title 8 of the Code of Federal Regulation, such as a deadline for filing an appeal under 8 C.F.R. § 103.3, a motion under 8 C.F.R. § 103.5, or an asylum application under 8 C.F.R. § 208.2. Counsel's reference to Chapter 22.2(b)(3)(F)(ii) of the AFM is also inapplicable because it relates to labor certifications with ending validity dates that fall on a Saturday, Sunday or Federal Legal Holiday.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i), which discusses receipt dates: "An application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and, unless otherwise specified . . . shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted." Here, the Form I-918 Supplement A that the petitioner filed on the beneficiary's behalf was not receipted by the Vermont Service Center until November 8, 2010, two days after the beneficiary turned 21. According, he no longer met the definition of a child at section 101(b)(1) of the Act and could not therefore be considered a qualifying family member under section 101(a)(15)(U)(ii)(II) of the Act.

Conclusion

As always 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.

ORDER: The appeal is dismissed. The petition remains denied.