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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

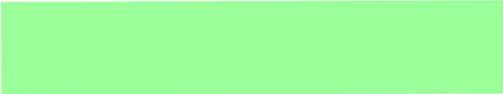


U.S. Citizenship
and Immigration
Services



Date: Office: VERMONT SERVICE CENTER FILE: 

DEC 04 2013

IN RE: PETITIONER: 
BENEFICIARY:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), approved the petitioner's U nonimmigrant visa petition (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 her child. 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 her child 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) of the Act provides for U-1 nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 101(a)(15)(U)(ii) allows certain family members to also be accorded U nonimmigrant status based upon their qualifying relationship to the U-1 nonimmigrant. The regulation at 8 C.F.R. § 214.14(a)(10) defines a qualifying family member as the spouse or children of an alien victim 21 years of age or older.

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

Factual and Procedural History

In February 2007, the petitioner filed a request for U nonimmigrant status for herself and the beneficiary, pending the publication of regulations implementing the U classification. On April 2, 2007, U.S. Citizenship and Immigration Services (USCIS) granted the beneficiary interim relief in the form of deferred action. On August 27, 2007, the beneficiary got married. On April 7, 2008, the petitioner filed a Form I-918 Supplement A on behalf of the beneficiary. The director issued a Request for Evidence (RFE) of the beneficiary's marriage certificate and passport, and noted that she was inadmissible under section

212(a)(6)(A)(i) (present without admission or parole) of the Act. The beneficiary responded with additional evidence. On October 16, 2009, the petitioner was granted U-1 nonimmigrant status. On May 31, 2010, the director denied the Form I-918 Supplement A because the beneficiary is married and did not meet the definition of a qualifying family member at the time the petitioner filed the Form I-918 Supplement A. On appeal, counsel submits a brief and additional evidence.

Analysis

On appeal, counsel claims that because the beneficiary was not married on the date the petitioner filed her U visa application, she is a qualifying family member of a U-1 nonimmigrant. Referencing a January 6, 2006 USCIS Memorandum¹, counsel states it is “clear that applicants who were granted U interim relief and whose application for U nonimmigrant relief subsequently are approved will have their U nonimmigrant status relate back to [when] the request for U interim relief was approved,” and “this ‘relating back’ . . . was also expanded to include derivative applicants.” Counsel contends that USCIS must adjudicate the beneficiary’s application based on the date U interim relief was granted; when she was unmarried. Counsel claims that requiring a qualifying U visa derivative beneficiary to remain single “improperly adds an *ultra vires* requirement to the U visa statute,” because the “plain language of the statute requires only that the derivatives qualify on the date of the application and not on some future date after regulations are implemented.”

The statute and regulations permit no exception to the requirement that the beneficiary meet the definition of a qualifying family member and we lack authority to waive the requirements of the statute and the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). Regarding counsel’s claim that the beneficiary was unmarried when she was granted U interim relief, the grant of U interim relief does not, in itself, establish the beneficiary’s eligibility for U nonimmigrant classification or bind USCIS to approve the Form I-918 Supplement A that was filed on her behalf. *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 (noting that a grant of interim relief “does not constitute a binding determination that any given eligibility requirement had been proven.”). In addition, 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 relationship between a petitioner and the qualifying family member must exist not only at the time a Form I-918 U petition (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). Once married, a son or daughter ceases to be considered a child under section 101(b)(1) of the Act. Although the beneficiary in this case was a child at the time she was initially granted interim relief, she ceased to meet the definition of a child upon her marriage in 2007. Consequently, at the time the instant petition was filed and adjudicated, the beneficiary could not be

¹ *Applications for U Nonimmigrant Status, Revisions to Adjudicator’s Field Manual (AFM) Chapter 39 (AFM Update AD06-11)*, USCIS Interoffice Memorandum (Jan. 6, 2006)

classified as a qualifying family member at 8 C.F.R. § 214.14(a)(10) and we find no error in the director's decision.

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not established that the beneficiary is eligible for U-3 nonimmigrant status as a qualifying family member. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act.

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