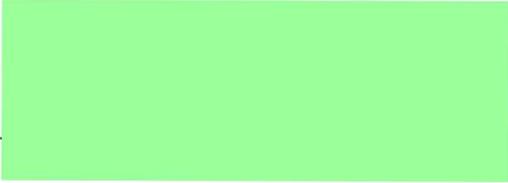
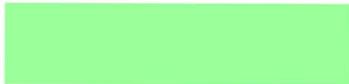


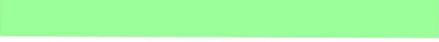


U.S. Citizenship
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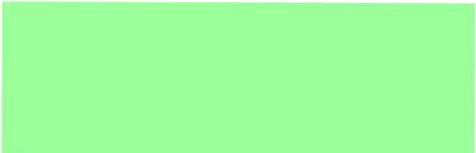


Date: **MAR 08 2013** Office: VERMONT SERVICE CENTER FILE: 

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:

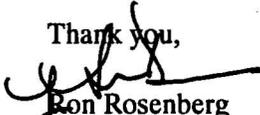


INSTRUCTIONS:

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, 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 daughter. The petitioner's U nonimmigrant status petition (Form I-918) was granted. 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 daughter 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 was over the age of 21 years when the Form I-918 Supplement A was filed and, therefore, she no longer meets the definition of a child at section 101(b)(1) of the Act. On appeal, counsel submits a brief and additional evidence.

Applicable Law

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.

(b)(6)

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Regarding the admission of a qualifying family member, the regulation at 8 C.F.R. § 214.14(f) states, in pertinent part:

(1) 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.

* * *

(4) *Relationship.* Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, 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. . . .

* * *

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

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). 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).

Factual and Procedural History

On January 11, 2010, the petitioner filed a Form I-918 Supplement A on behalf of the beneficiary. On the Form I-918 Supplement A, the petitioner indicated that the beneficiary was born on [REDACTED]. On May 16, 2012, 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) because she was over 21 years of age at the time of filing.

The petitioner had previously filed a request for interim relief on or about May 18, 2006, which was granted on July 17, 2006. Although the petitioner included the beneficiary in the cover letter of her request, on July 17, 2006, United States Citizenship and Immigration Services (USCIS) sent the

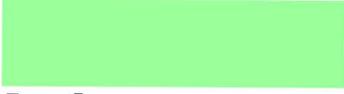
petitioner a letter informing her that USCIS was unable to grant the beneficiary interim relief because the petitioner had not provided sufficient biographical data for the beneficiary. Although the letter informed the petitioner that she could submit documents to overcome this deficiency, it appears that the petitioner failed to submit such evidence until after the beneficiary had turned 21 years of age. As such, the beneficiary was never granted U interim relief.

On appeal, counsel asserts that USCIS should look to the date on which the petitioner filed for interim relief to determine the age of the beneficiary instead of the date on which the petitioner filed the Form I-918 Supplement A.

Analysis

The relevant evidence submitted below fails to establish that the beneficiary meets the definition of a qualifying family member. The beneficiary does not qualify for relief as the child of the petitioner because the relationship between the petitioner and the qualifying family member must exist at the time the Form I-918 is filed, and must continue to exist at the time Form I-918 Supplement A is adjudicated. 8 C.F.R. § 214.14(f)(4). The beneficiary turned 21 years of age on October 4, 2007, and the Form I-918 Supplement A was not filed until January 11, 2010. At the time of filing, the beneficiary was no longer a child as defined under section 101(b)(1) of the Act. Consequently, the beneficiary cannot be 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 denying the Form I-918 Supplement A. 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).

On appeal, counsel contends that USCIS was incorrect when it looked at the date the petitioner filed Form I-918 Supplement A on behalf of her daughter, and that the beneficiary's age should have been calculated based on the date on which the petitioner was granted interim relief; July 17, 2006. In support of her argument, she asserts that USCIS's July 17, 2006 letter did not state a date by which the biographical data must have been received. Counsel also contends that according to the March 27, 2008 Memorandum, *New Classification for Victims of Criminal Activity – Eligibility for "U" Nonimmigrant Status*, if a qualifying family member was under 21 years of age at the time the request for interim relief was granted, USCIS will continue to consider such family member a qualifying family member, even if he or she is over the age of 21 years. However, the memorandum only applies to "qualifying family members *who were granted interim relief.*" Aytes Memo at 1. (Emphasis added.) Here, the beneficiary was never granted interim relief. As such, the memorandum does not apply to this matter, and counsel's claim is without merit. Counsel's reliance on an unpublished AAO decision is also misplaced, as it is not a precedent decision. 8 C.F.R. § 103.3(c).



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Conclusion

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 petitioner's daughter'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.