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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

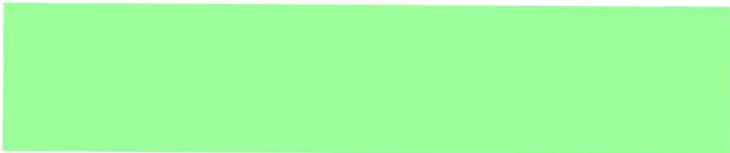


Date: **MAR 09 2013** Office: VERMONT SERVICE CENTER FILE: 

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:

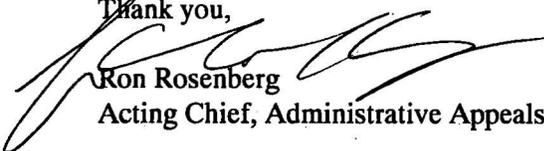


INSTRUCTIONS:

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

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 his daughter. 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 his 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 met 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)(ii)(II) of the Act, provides, in pertinent part, for derivative U nonimmigrant classification to, for a U nonimmigrant “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.”

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. . . .

* * *

Section 101(b)(1) of the Act states, in pertinent part: “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 the beneficiary's eligibility for derivative U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4), (f)(5). 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 August 9, 2011, the petitioner filed a Form I-918 Supplement A on behalf of the beneficiary and submitted a Mexican birth certificate showing that the beneficiary was born on May 21, 1982, and was 29 years old on the date the Form I-918 Supplement A was filed. On April 6, 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 in 2003, which was granted on August 13, 2004. The petitioner, however, did not file a request for interim relief for the beneficiary, and she was never granted interim relief.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) should look to the date on which the petitioner filed for interim status 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 petitioner 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 was 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 May 21, 2003, and the Form I-918 Supplement A was not filed until August 9, 2011. 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 the Form I-918 Supplement A on behalf of his daughter, and that the beneficiary's age should have been calculated based on the date on which the petitioner applied for interim relief. In support of his argument, counsel cites the March 27, 2008 USCIS policy memorandum, *New Classification for Victims of Criminal Activity – Eligibility for "U" Nonimmigrant Status*, which states that if a

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qualifying family member was under 21 years of age at the time the request for interim relief was filed, USCIS will continue to consider such family member as a qualifying family member, even if he or she is over the age of 21 years at the time the Form I-918 and Form I-918 Supplement A are filed. However, the memorandum explicitly states that this policy only applies to “qualifying family members *who were granted interim relief*.” 2008 Memo at 1. (Emphasis added.) Here, the petitioner never applied for interim relief for the beneficiary and she was never granted interim relief. As such, the memorandum does not apply in this matter.

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.