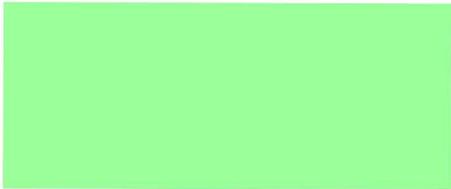


(b)(6)

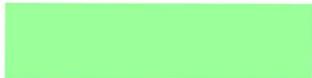
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



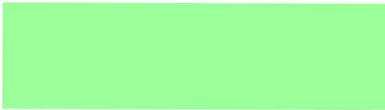
DATE: **MAR 11 2013**

Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for U Nonimmigrant Classification 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:

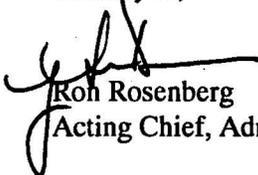


INSTRUCTIONS:

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 (the director), denied the petitioner's U-1 nonimmigrant status petition (Form I-918) and the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of his mother.¹ 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 his parent under section 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii), of the Immigration and Nationality Act (the Act), as a qualifying family member of a U-1 nonimmigrant.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to alien victims of qualifying crimes and certain qualifying family members.

Section 101(a)(15)(U)(ii) of the Act provides derivative U nonimmigrant classification for family members defined as, in pertinent part:

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents 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; and, in the case of an alien victim under the age of 21. . . the spouse, child(ren), parents or unmarried siblings under the age of 18 of such an alien.

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

(1) *Eligibility.* . . . To be eligible for. . . U-4 (parent of a U-1 alien who is a child under 21 years of age) . . . nonimmigrant status, it must be demonstrated that:

(i) The alien for whom. . . U-4 . . . 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.

¹ The petitioner's second Form I-192 (EAC 11 177 50371) remains pending with the Vermont Service Center.

* * *

(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.

* * *

Facts and Procedural History

In approximately October 2005, the petitioner was granted U visa interim relief. The beneficiary never received U visa interim relief. On February 2, 2010, the petitioner filed a Form I-918 U petition along with a Form I-918 Supplement A, seeking U-4 nonimmigrant status on his mother's behalf. At the time, the petitioner was over 21 years of age. The director issued a Request for Evidence (RFE) on May 19, 2010, asking the petitioner to withdraw the current I-918 Supplement A petition or to submit evidence that would demonstrate that the beneficiary met the requirements as a qualifying family member. The petitioner, through counsel, responded to the RFE. On December 23, 2010, the director denied the Form I-918 Supplement A. In his decision, the director stated that the beneficiary was ineligible for U-4 nonimmigrant status as a qualifying family member of a U-1 nonimmigrant because the petitioner was over 21 years of age when he filed the I-918 Supplement A on the beneficiary's behalf. The petitioner timely appealed that denial.

On appeal, counsel submits a brief asserting that the date on which the petitioner was granted U visa interim relief should be the controlling date for determination of derivative beneficiary status.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Based on the evidence in the record, we find no error in the director's decision to deny U-4 nonimmigrant status to the beneficiary. Even if the petitioner's pending second Form I-192 and Form I-918 are approved, the beneficiary would be ineligible as a U-4 nonimmigrant.

On appeal, counsel contends that it is the petitioner's U interim relief filing date that determines a family member's eligibility for U nonimmigrant status. Counsel cites, in part, a USCIS policy memorandum² in support of her assertions. The memorandum cited states, in pertinent part, at page one: "This guidance provides that with regard to qualifying family members *who were granted interim relief*, the family member's age on the date of the U interim relief filing shall be controlling for the age eligibility requirement" (Emphasis added). As used in the memorandum, the term "on the date of the U interim relief filing" clearly refers to the date of the family member's interim

² *New Classification for Victims of Criminal Activity – Eligibility for "U" Nonimmigrant Status*, USCIS Memorandum, (March 27, 2008).

Page 4

relief filing, not the date that the principal filed for interim relief. As the beneficiary in this case did not file for U visa interim relief, the memorandum is not applicable to the case at hand. As such, even if the petitioner's Form I-918 U petition is approved, the beneficiary is not eligible for U-4 nonimmigrant status as the petitioner was over the age of 21 when he filed the I-918 Supplement A on her behalf. *See* 8 C.F.R. § 214.14(a)(10), (f).

Counsel also states that USCIS's failure to promulgate the U nonimmigrant visa regulations prejudiced the beneficiary because, had the regulations been in effect prior to the petitioner's twenty-first birthday, he would have filed a petition on his mother's behalf. The statute and regulations, however, 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).

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 parent's eligibility for U-4 nonimmigrant status as a qualifying family member.

ORDER: The appeal is dismissed. The Form I-918 Supplement A remains denied.