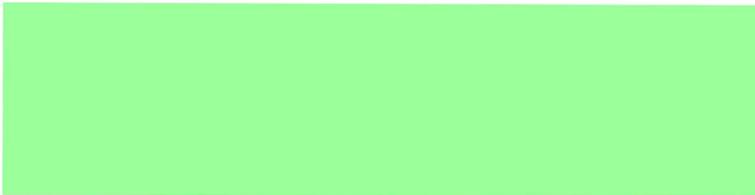




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 04 2014** Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:
BENEFICIARY:

PETITION: Petition for Qualifying Family Member of 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 (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), 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 and the petition will remain denied.

The petitioner seeks nonimmigrant classification of the beneficiary 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 did not meet the definition of qualifying family member at the time the petitioner filed her Petition for U Nonimmigrant Status (Form I-918 U petition). On appeal, counsel submits a statement, additional evidence and copies of documents already included in the record.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victims' qualifying family members. For an alien victim of certain criminal activity who is 21 years of age or older, section 101(a)(15)(U)(ii)(II) of the Act defines a qualifying family member as the victim's spouse and children. *See also* section 214(p)(7) of the Act.

Facts and Procedural History

The beneficiary was listed as a derivative on an application for asylum (Form I-589) filed on his behalf by his alleged spouse, [REDACTED] in 1998. On March [REDACTED], the beneficiary married the petitioner in California, indicating on his marriage certificate that he had not been previously married. On March 11, 2013, the petitioner filed her own Form I-918 U petition and concurrently filed a Form I-918 Supplement A on behalf of the beneficiary. On May 24, 2013, the petitioner's Form I-918 U petition was approved. On August 26, 2013, the director denied the Form I-918 Supplement A because the petitioner did not submit a divorce decree for the beneficiary's marriage to [REDACTED] and, therefore, the beneficiary could not be classified as a qualifying family member of a U-1 nonimmigrant.

On appeal, counsel states that the beneficiary was never married prior to his current marriage to the petitioner either in this or any other country. Counsel states that the beneficiary does not know anyone by the name of [REDACTED]. According to counsel, when the beneficiary initially came to the United States, he spoke no English, was persuaded by an unscrupulous "notario" to apply for an immigration benefit, paid this notario a large sum of money, and "does not remember signing any papers."

Analysis

The AAO conducts appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny U-2 nonimmigrant status to the beneficiary.

The beneficiary provided in a September 24, 2013 affidavit that in 1996 his coworkers told him about a woman who could "help [him] fix [his] papers based on the time [he] had lived here in the United States." The beneficiary stated that he was unmarried and without children and he needed to legalize his status to gain a promotion in the factory where he worked, as his family in Mexico relied upon him for financial support. The beneficiary stated that his coworkers recommended that he see a particular notario to help him legalize his immigration status. The beneficiary continued to state that this notario asked him for his biographical information and his birth certificate, for which she charged him \$1,500. The beneficiary stated that he saw her no more than three times and spent no more than ten minutes with her each time. He also stated that he did not remember "signing any papers." The beneficiary stated further that the notario disappeared after September 11, 2001 and he never saw her again.

The beneficiary also stated that in or around May 2002 he talked with an immigration attorney "to see what was happening with [his] case." The beneficiary asserted that despite paying the attorney several hundred dollars, he never received anything from the attorney and "[he] believe[d] [his] application was ultimately denied."

As noted by the director in the denial decision, the record contains a marriage certificate between the beneficiary and [REDACTED] that was submitted in conjunction with the Form I-589 to demonstrate that the beneficiary was a derivative of Ms. [REDACTED] asylum claim. Although the beneficiary did not sign the Form I-589, his signature appears on the Biographical Information Sheet (Form G-325A), listing Ms. [REDACTED] as his wife, as well as an Application for Employment Authorization (Form I-765), all of which were submitted along with the Form I-589 in 1998.

Furthermore, a check of U.S. Citizenship and Immigration Services (USCIS) systems reveals that the beneficiary submitted four subsequent Form I-765 applications after 1998 based upon his Form I-589, the last of which was submitted in 2002. The beneficiary's claims of not remembering "signing any papers" are belied by his submission of these employment authorization applications, as well as his signature on the Form G-325A, where [REDACTED] is listed as his spouse. Additionally, the beneficiary stated in his September 2013 declaration that he went to see an attorney to "see what was happening with [his] case," believing that his application was denied; thus, indicating that he was aware in 2002 that he had a pending request for an immigration benefit despite his assertions that he did not remember "signing any papers."

The beneficiary's testimony, by itself, that he was not previously married is insufficient to find him eligible as a qualifying family member of a U-1 nonimmigrant. Although the beneficiary has no recollection of "signing papers," the evidence demonstrates that he continued to renew his employment authorization for several years after initially meeting the notario and, thus, his testimony lacks probative

value. Without a divorce decree from [REDACTED] or credible evidence that the marriage, which took place in [REDACTED] Guatemala on July [REDACTED] did not exist or was invalid, the beneficiary cannot be classified as the petitioner's spouse under section 101(a)(15)(U)(ii)(II) of the Act. Accordingly, we will not disturb 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). Here, that burden has not been met.

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