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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 2 6 2014 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: PETITIONER: [redacted]
BENEFICIARY:

PETITION: Petition for U Nonimmigrant Classification 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:

[redacted]

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 her sibling. 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 her sibling 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 since the petitioner was 21 years old when she filed her own Form I-918 U petition, seeking classification as a U-1 nonimmigrant. On appeal, counsel submits a statement.

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 under 21 years old, section 101(a)(15)(U)(ii)(I) of the Act defines a qualifying family member as the victim's spouse, children, unmarried siblings under 18 years of age, and parents; and for a victim 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* 8 C.F.R. § 214.14(a)(10) (defining qualifying family members of U nonimmigrants). To be eligible for derivative status, the beneficiary must be, at the time the Form I-918 Supplement A is filed, "a qualifying family member." 8 C.F.R. § 214.14(f)(1)(i).

Facts and Procedural History

The petitioner was born on 1990 in Mexico. On 2011, her twenty-first birthday, the petitioner filed her own Form I-918 U petition to classify herself as a U-1 nonimmigrant and concurrently filed a Form I-918 Supplement A on behalf of her sibling. On 2013, the director denied the Form I-918 Supplement A because the petitioner's sibling was not a qualifying family member.

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-5 nonimmigrant status to the beneficiary. For a U-1 petitioner who is 21 years old or older, the qualifying family members are the spouse and child(ren) of such petitioner. Section 101(a)(15)(U)(ii)(II) of the Act. Because the petitioner filed her own Form I-918 U petition on her twenty-first birthday, her sibling could not be considered a qualifying family member. Only U-1 petitioners who are under the age of 21 when they file their petitions for U nonimmigrant status may seek derivative U classification of their unmarried siblings

under the age of 18. Section 101(a)(15)(U)(ii)(I). Accordingly, the beneficiary may not be classified as a qualifying family member pursuant to section 101(a)(15)(U)(ii) of the Act.[1]

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.

[1] Counsel's arguments regarding the undue hardship suffered by the petitioner and her sibling are not properly before our office, as we lack authority to waive the requirements of the statute. *See United States v. Nixon,* 418 U.S. 683, 695-96 (1974).