

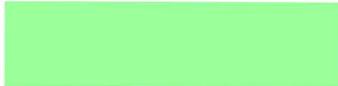
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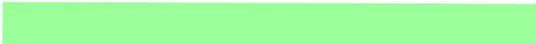
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date:           Office:           VERMONT SERVICE CENTER           FILE:   
NOV 17 2014

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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. On appeal, counsel submits a brief, 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*

On May 17, 2011, the petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U petition) to classify herself as a U-1 nonimmigrant. On May [REDACTED] the petitioner and beneficiary married. The petitioner's Form I-918 U petition was approved on July 6, 2012. On May 21, 2013, the petitioner filed a Form I-918 Supplement A on behalf of the beneficiary. On January 31, 2014, the director denied the Form I-918 Supplement A because the petitioner's spouse was not a qualifying family member at the time that the petitioner filed her Form I-918 U petition.

#### *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.

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. Sections 101(a)(15)(U)(ii)(II), 214(p)(7) of the Act. The relationship between the U-1 principal petitioner and his or her spouse must exist at the time the principal petition is properly filed, and the relationship must continue to exist at the time the derivative petition is properly filed, and at the time of the spouse's subsequent admission to the United States. *See Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicator's Field Manual (AFM) Chapter 39 (AFM Update AD 13-06)*, USCIS

Memorandum at 6 (June 15, 2014). Because the petitioner and the beneficiary were not married at the time that the petitioner filed her Form I-918 U petition, the beneficiary cannot be considered a qualifying family member. Accordingly, the beneficiary may not be classified as a qualifying family member pursuant to section 101(a)(15)(U)(ii) of the Act.<sup>1</sup>

*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.

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<sup>1</sup> On appeal, counsel claims that Congress did not intend to limit the ability of U-1 principals to seek derivative U status for their family members, but provides no evidence of Congressional intent to support her claim. We lack authority to waive the requirements of the statute, as implemented by 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).