



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: Office: VERMONT SERVICE CENTER FILE: [REDACTED]

NOV 24 2014

IN RE: PETITIONER: [REDACTED]  
BENEFICIARY: [REDACTED]

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 of the Vermont Service Center (the director) granted the petitioner's U nonimmigrant status petition (Form I-918 U petition) and 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 (child) of a U principal.

*Applicable Law*

Section 101(a)(15)(U)(ii) of the Act permits certain qualifying family members of U principals to obtain U derivative status. The determination of which family members are considered "qualifying" depends on their relationship to the principal and the age of the principal. If the U principal is 21 years of age or older, only the spouse and children<sup>1</sup> are eligible for derivative status as qualifying family members.

Age determinations for U principals and children are specified at section 214(p)(7) of the Act, which states:<sup>2</sup>

**AGE DETERMINATIONS-**

(A) CHILDREN- An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(U)(i), and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii), if the alien attains 21 years of age after such parent's petition was filed but while it was pending.

(B) PRINCIPAL ALIENS- An alien described in clause (i) of section 101(a)(15)(U) shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

Accordingly, the age of a U principal's son or daughter is "locked in" at the time the U principal files his or her own U petition. A son or daughter who was under the age of 21 on the date that the U principal

<sup>1</sup> The term *child* means, in pertinent part, an unmarried person under the age of twenty-one. See Section 101(b)(1) of the Act.

<sup>2</sup> Section 214(p)(7) of the Act was added by section 805(a) of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (March 7, 2013) and is considered part of the original Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). See section 805(b) of VAWA 2013. Although section 214(p)(7) had not yet been enacted when this petition was filed or denied, we are applying it to this matter because it has retroactive effect.

files his or her own U petition will not lose eligibility for derivative U status based solely on age if such son or daughter turns 21 during the adjudication process.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

#### *Pertinent Facts and Procedural History*

The petitioner filed her own Form I-918 U petition and the instant Form I-918 Supplement A on April [REDACTED] the same date that the beneficiary turned 21 years old. The director denied the Form I-918 Supplement A because the beneficiary was no longer a child as of the filing date.<sup>3</sup>

On appeal, counsel states that because U.S. Citizenship and Immigration Services (USCIS) actually received the Form I-918 Supplement A approximately two hours before the beneficiary had been born 21 years earlier, the derivative petition was filed while the beneficiary was under the age of 21. In the alternative, counsel states that the ineffective assistance of the petitioner's prior counsel caused the filing delay and, therefore, the filing deadline should be equitably tolled.

#### *Analysis*

We are expected to give the words of a statute their ordinary, contemporary, common meaning, absent an indication that Congress intended them to be read otherwise. *Williams v. Taylor*, 529 U.S. 420, 120 S. Ct. 1479, 146 L. Ed. 2d 435 (2000). Here, the language of the statute provides that when determining the age of a U principal's son or daughter, we look to the "*the date on which [the U principal] petitioned for [his or her] status.*" (Emphasis added).

The time of the beneficiary's birth as compared to the time that the petitioner's U petition is received by USCIS is not the relevant inquiry because we look only to the date of filing, not the time of filing. A day is not a divisible unit or period of time when determining eligibility under section 214(p)(7) of the Act. Because April [REDACTED] was the date on which both the petitioner filed her own Form I-918 U petition and the beneficiary turned 21, the beneficiary is ineligible as a qualifying family member under section 101(a)(15)(U)(ii)(II) of the Act, as determined under section 214(p)(7)(A) of the Act.

Counsel's alternate arguments similarly fail. Although the petitioner has established that her failure to file her own U petition prior to the date of the beneficiary's twenty-first birthday was the result of ineffective assistance of prior counsel, she was not required to file her own U petition during a specific time period and she has not demonstrated that section 214(p) of the Act is a statute of limitations subject to equitable tolling. The cases cited by counsel as examples where equitable tolling filing deadlines have been applied do not involve U petitions.

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<sup>3</sup> The Form I-918 Supplement A was denied prior to enactment of VAWA 2013, which is why the director referenced the filing date of the derivative petition, not the petitioner's own Form I-918 U petition.

Counsel's further assertions regarding a "liberalized approach" to determining which sons and daughters of U principals may be classified as qualifying family members were addressed through the passage of VAWA 2013, which added new section 214(p)(7)(A) of the Act and provided for its retroactive effect. We lack authority to waive statutory requirements.

*Conclusion*

As in all visa proceedings, the petitioner bears the 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.