

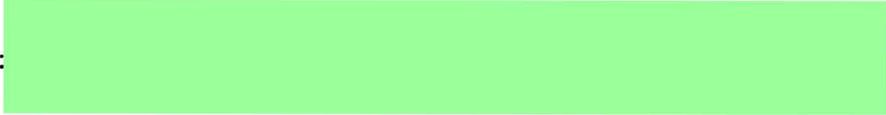
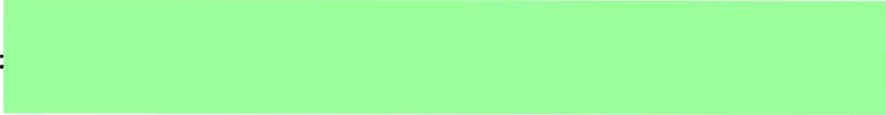


U.S. Citizenship
and Immigration
Services

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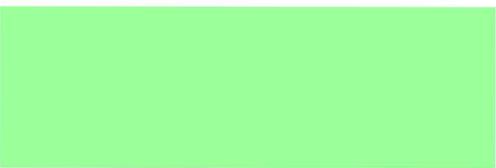


Date: **OCT 14 2014** Office: VERMONT SERVICE CENTER FILE: 

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:

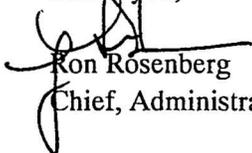


INSTRUCTIONS:

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 that the petition was filed. On appeal, counsel submits a brief 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 petitioner was born on June 25, 1988 in Mexico. On November 2, 2009, when he was 21 years of age, the petitioner filed his own Petition for U Nonimmigrant Status (Form I-918 U petition) to classify himself as a U-1 nonimmigrant which was ultimately approved on May 25, 2010. On April 15, 2013, the petitioner filed a Form I-918 Supplement A on behalf of the beneficiary. On February 10, 2014, the director denied the Form I-918 Supplement A because the petitioner's parent was not a qualifying family member under section 101(a)(15)(U)(ii)(II) of the Act.

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.

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. Because the petitioner filed his Form I-918 U petition when he was 21 years old, the beneficiary may 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 parent. Sections

101(a)(15)(U)(ii)(I), 214(p)(7) of the Act. 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 Although counsel admits that the petitioner was over 21 years of age when he filed the Form I-918 Supplement A, he claims that the petitioner is mentally challenged and dependent on his parents, and Congress' intent to protect abused children should extend to mentally challenged and dependent adults. However, we lack authority to waive the requirements of the statute.