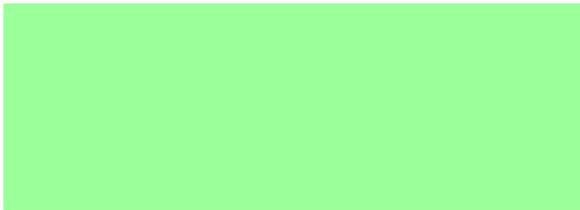


(b)(6)

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

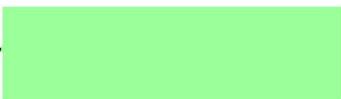


U.S. Citizenship
and Immigration
Services

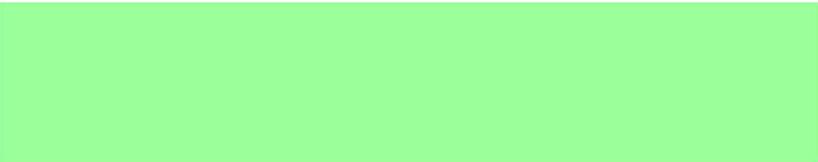


Date: FEB 06 2015

Office: VERMONT SERVICE CENTER FILE

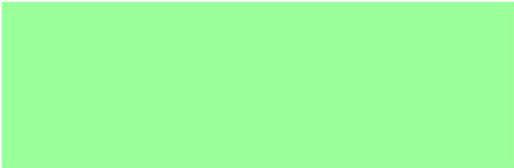


IN RE: PETITIONER:
BENEFICIARY:



PETITION: Petition for a Qualifying Family Member of a 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 Acting Director, Vermont Service Center (director), denied the petitioner's Form I-918 Supplement A, Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A), submitted 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, who was granted U nonimmigrant status, 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 nonimmigrant.

The director denied the petition, after determining that the petitioner had failed to establish that the beneficiary was a qualifying family member at the time the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), was filed. On appeal, the petitioner submits a brief and additional evidence, and contends that the beneficiary was his common law wife at the time he filed his Form I-918 U petition, and thus, was a qualifying family member.

Applicable Law

Section 101(a)(15)(U)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(U)(ii), provides for derivative U nonimmigrant classification to qualifying family members of alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. *See also* 8 C.F.R. § 214.14(f)(1) ("An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member, . . . if accompanying or following to join such principal alien").

The term "qualifying family member," as used in U nonimmigrant visa proceedings, is defined at 8 C.F.R. § 214.14(a)(1) and means:

in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), the spouse or child(ren) of such alien[].

Pursuant to the regulation at 8 C.F.R. § 214.14(f)(4), except for certain specified exceptions inapplicable here, the relationship between the petitioner and the qualifying family member must exist at the time the Form I-918 U petition is filed. The regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by (USCIS). USCIS shall conduct a *de novo* review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The beneficiary is a native and citizen of El Salvador who claims to have last entered the United States on April 14, 1998 without admission, inspection or parole. The record indicates that a Notice to Appear was issued against the beneficiary on May 25, 2006, placing her into removal proceedings based on her unlawful status in the United States. On August 15, 2011, an immigration judge administratively closed the beneficiary's removal proceedings, which, however, remain pending.¹

The petitioner filed a Form I-918 U petition on December 19, 2011, which was subsequently approved on October 10, 2012. The petitioner later married the beneficiary on November [REDACTED] and filed the instant Form I-918 Supplement A on her behalf on January 28, 2013. On December 26, 2013, the director denied the Form I-918 Supplement A because the petitioner and beneficiary did not have a qualifying spousal relationship at the time the Form I-918 U petition was filed. The petitioner filed the instant appeal of the denial of his petition on behalf of the beneficiary.

Analysis

We conduct appellate review on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the beneficiary's eligibility as a qualifying family member of a U-1 petitioner. The petitioner's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

The director correctly concluded that the beneficiary was not the petitioner's spouse, and thus, not a qualifying family member, as defined at 8 C.F.R. § 214.14(a)(1) because at the time of adjudication the record showed that the couple did not formally marry until November [REDACTED] after the Form I-918 U petition had already been filed and approved.

The petitioner now contends for the first time on appeal that the beneficiary was a qualifying family member as of the filing date of the Form I-918 U petition because he and the beneficiary were already married under common law in Colorado, which recognizes the validity of common law marriages.

Colorado recognizes marriages contracted without formal ceremony, which are otherwise known as common law marriages. Section 14-2-104(3) of the Colorado Revised Statutes provides that "[n]othing in this section shall be deemed to repeal or render invalid any otherwise valid common law marriage between one man and one woman." In *People v. Lucero*, the Supreme Court of Colorado determined that "[a] common law marriage is established where there is "mutual consent or agreement of the parties to be husband and wife, followed by a mutual and open assumption of a marital relationship." 747 P.2d 660, 663 (Colo. 1987) (citing H. Clark, *Law of Domestic Relations* 47-50 (1968); Mills, *Common Law Marriage in Colorado*, 16 Colo. Law. 252 (1987)). Such consent or agreement must be manifested by "conduct that gives evidence of the mutual understanding of the parties" in the form of mutual public acknowledgment of

¹ The Form I-918 Supplement A incorrectly states, at Parts 4.5 and 4.21, that the beneficiary was never in immigration proceedings and that removal proceedings against her were never initiated and are not pending.

the marital relationship. *Lucero*, 747 P.2d at 663-64 (noting that such a requirement is necessary to guard against fraudulent claims of common law marriage). Absent an express agreement, two forms of conduct that most clearly demonstrate the intention of the parties to be married are cohabitation of the parties and a general reputation in the community that the parties hold themselves out as husband and wife. *See id.* at 665; *see also Whitenhill v. Kaiser Permanente*, 940 P.2d 1129, 1132 (Colo. App. 1997). In such cases, there must be evidence of both cohabitation and reputation to establish a common law marriage. *Taylor v. Taylor*, 50 P. 1049, 1050 (Colo. 1897); *Klipfel's Estate et al., v. Klipfel*, 92 P. 26, 46-47 (Colo. 1907). Although specific behavior, such as the maintenance of joint banking and credit accounts; purchases and joint ownership of property; the use of the man's surname by the woman or the children born to the parties; and the filing of joint tax returns, may be considered in establishing cohabitation and repute, any form of evidence manifesting "the intention of the parties that their relationship is that of husband and wife" will also provide the requisite proof to infer the existence of a mutual agreement of the parties. *See id.* Determining whether or not a common law marriage in fact exists involves issues of fact and credibility. *See id.*

On appeal, the petitioner submits his personal statement; a copy of the birth certificate application for his son with the beneficiary; a 2008 residential agreement for his shared residence with the beneficiary and the couple's daughter;² copies of car insurance policy documents from August to October 2011; utility bills in the beneficiary's name at the couple's shared residence; joint credit card bills for March 2009, March 2011, and April 2011; joint checking account statements from July to December 2011 and October 2012; and the petitioner's 2006 school address showing the couple's shared residence.³

Upon review of the record, the petitioner has failed to satisfy his burden to demonstrate that he and the beneficiary were married under common law in Colorado at the time he filed the Form I-918 U petition. The petitioner has not shown the existence of an express agreement or consent between himself and the beneficiary to be married prior to their entry into a formal marriage in [REDACTED]. The petitioner, in his statement, dated January 21, 2014, does not assert that he and the beneficiary were ever in a common law marriage. Likewise, there is no statement from the beneficiary asserting the existence of a mutual agreement between the petitioner and herself to be husband and wife, prior to the couple's formal marriage ceremony.

In the absence of an express agreement or mutual understanding that the petitioner and beneficiary are husband and wife, their common law marriage may still be established by evidence of their cohabitation and reputation in the community as a married couple. Although we are satisfied that the record adequately demonstrates the couple's cohabitation at the time of the Form I-918 U petition filing in December 2011, it fails to establish that they held themselves out to, and had a reputation in, their community and society as a married couple. *See Taylor*, 50 P. at 1050 (evidence of both cohabitation and reputation as a married couple is required to establish a common law marriage).

The petitioner's submission of a few selected copies of statements from the couple's joint credit card and

² The birth certificates of the petitioner's two children are also part of the record.

³ The index to the submission on appeal indicated that the petitioner was including a statement from Professor [REDACTED] asserting that he viewed the petitioner and beneficiary as married prior to their legal ceremony in [REDACTED]. However, this statement was not included in the actual submission.

bank accounts, their car insurance policy records, and their 2008 residential rental agreement evidence their cohabitation, but the documents fail to establish that they had a reputation of being a married couple. In the first instance, none of the aforementioned accounts or the rental agreement requires the joint account holders or parties to be married, and thus, the existence of these joint accounts do not show that the couple was reputed as being married by society. *See Taylor*, 50 P. at 1050; *Klipfel's Estate*, 92 P. at 46. The beneficiary never adopted the surname of the petitioner prior to the couple's formal marriage, and there is no indication that the couple otherwise held themselves out as married in setting up their joint accounts and entering into the rental agreement.

The record contains a copy of the application for the birth certificate of the couple's son born in [REDACTED]. The application lists the beneficiary's maiden name and has her marital status marked as both "Never married" and "Married (includes common-law)." However, while the designation of "Never married" is unaltered, the box designating the beneficiary's marital status as married appears to have been altered at least once. On its face, this photocopy has diminished probative value given the conflicting designations of the beneficiary's marital status, and because it is unclear as to whether the alterations were made contemporaneously with the filing of the application or sometime later.

The record also contains the couple's son's [REDACTED] birth certificate in which the beneficiary has the petitioner's surname. However, this document alone is insufficient to establish that the couple held themselves out to be a married couple prior to the filing of the Form I-918 U petition, particularly given the considerable documentation in the record to the contrary. For instance, the petitioner did not list the beneficiary as his spouse on the Form I-918 petition.⁴ Our review of the beneficiary's immigration records also reveals that the beneficiary has consistently held herself out as unmarried to U.S. Citizenship and Immigration Services (USCIS) and the immigration court on several immigration benefits applications between [REDACTED] prior to the couple's formal marriage. Additionally, the record contains the beneficiary's 2007 tax returns, which she filed as head of household rather than as married filing separately. The petitioner has not submitted any subsequent tax returns that he and the beneficiary filed as a married couple filing jointly or separately. Finally, we note there are no letters or statements from family members, friends, other members of the community, or even the petitioner and beneficiary, indicating that the petitioner and beneficiary held themselves out to be and were viewed as a married couple in society prior to the filing of the Form I-918 U petition. *See* Fn. 3.

Accordingly, upon full review of the record, the petitioner has not demonstrated the couple's reputation as husband and wife at the time he filed the Form I-918 U petition, and consequently, he has failed to establish that the beneficiary was his common law wife and a qualifying family member as required by 8 C.F.R. § 214.14(a)(1). *See also* 8 C.F.R. § 214.14(f)(4).

⁴ In fact, the petitioner indicated that he was divorced on the Form I-918 U petition. A common law marriage entered into on or after 2006 under Colorado law is subject to the same restrictions and prohibitions as a formal marriage, and consequently, is not valid if entered into prior to the dissolution of an earlier marriage of one of the parties. Colo. Rev. Stat. §§ 14-2-109.5; 14-2-110 (West 2006). Here, even if the record established that the parties had consented to be married under common law, there is no evidence in the record of the petitioner's earlier marriage or subsequent divorce to enable us to make a determination as to when the claimed common law marriage could legally take effect.

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 and the petition remains denied.