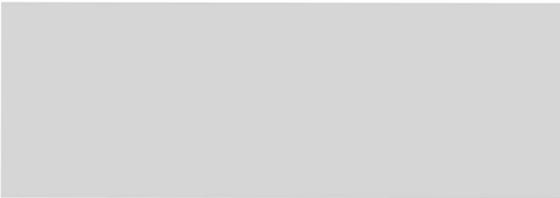




U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

MAY 18 2015

FILE #:



APPEAL RECEIPT #:



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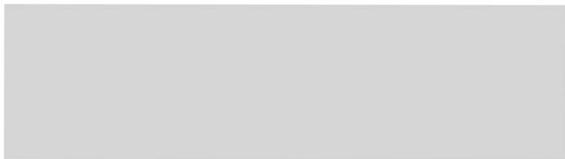
Petitioner:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) revoked approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 originally approved the petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A), but subsequently revoked that approval on July 5, 2013, finding that the beneficiary was not a qualified derivative at the time the petitioner filed her Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). On appeal, the petitioner submits a letter.

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.

Relationship status for a U derivative is set out in 8 C.F.R. § 214.14(f)(4):

(4) Relationship. Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to exist at the time Form I-918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.

Accordingly, the date of marriage must precede the date that the Form I-918 U petition was filed in order to establish that the petitioner had a spouse who qualified for derivative status.

The regulation at 8 C.F.R. § 214.14(h) states, in pertinent part, the following:

(h) *Revocation of approved petitions for U nonimmigrant status –*

* * *

(2) *Revocation on notice.*

(i) [U.S. Citizenship and Immigration Services (USCIS)] may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may

revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

* * *

(B) approval was in error. . . .

(ii) . . . USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given that evidence will be within the sole discretion of USCIS. . . .

In addition, 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."

Pertinent Facts and Procedural History

The petitioner filed her Form I-918 U petition on May 13, 2008. She married the beneficiary on 2010 and filed a Form I-918 Supplement A for the beneficiary as a derivative on June 7, 2010. The director initially approved the Form I-918 Supplement A with a validity period between December 13, 2010 and August 10, 2013. On November 6, 2012, the beneficiary filed an Application to Register Permanent Residence or Adjust Status (Form I-485).

On March 26, 2014, the director issued a Notice of Intent to Revoke (NOIR) the Form I-918 Supplement A approval, informing the petitioner that the Form I-918 Supplement A had been approved in error because she was not married to the beneficiary at the time she filed her Form I-918 U petition. The director requested evidence to demonstrate that the beneficiary was a qualified family member at the time the petitioner filed her Form I-918 U petition. In response to the NOIR, the petitioner submitted a letter. The director found the petitioner's response insufficient to overcome the proposed ground for revocation, and revoked the approval of the Form I-918 Supplement A on August 11, 2014. The director denied the Form I-485 on September 30, 2014. The petitioner timely appealed the revocation of the Form I-918 Supplement A.

On appeal, the petitioner asserts that section 101(a)(15)(U)(ii) of the Act, does not require that a spouse be married to the petitioner at the time the U nonimmigrant petition is filed, but only that the relationship exist at the time the Form I-918 Supplement A is filed.

Analysis

We conduct appellate review on a *de novo* basis. A full review of the record, including the statement submitted on appeal, does not establish the beneficiary's eligibility for U-2 derivative status.

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 the spouse of a petitioner is eligible for derivative benefits. Section 101(a)(15)(U)(ii). The regulations clarify the statute by providing that "the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to exist at the time Form I-918, Supplement A is adjudicated." 8 C.F.R. § 214.14(f)(4). The June 15, 2014 Policy Memorandum, *Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions*, reiterates the regulation, stating that "the qualifying relationship must: (1) exist at the time the principal files the petition; (2) continue to exist at the time the family member's petition is adjudicated; and, (3) continue to exist at the time of the derivative's subsequent admission to the United States."

On appeal, the petitioner distinguishes section 101(a)(15)(U)(ii)(I) of the Act from section 101(a)(15)(U)(ii)(II) of the Act by noting that subsection I specifies that "the spouse, children, unmarried siblings under 18 years of age *on the date on which such alien applied for status* under such clause, and parents of such alien . . ." (emphasis added) are eligible for derivative status of a petitioner under 21 years of age whereas subsection II states only that "the spouse and children of such alien" who is or is over 21 years of age are eligible for derivative status and does not contain the limiting language italicized above. The petitioner concludes that in the absence of that language, Congress intended that family members of petitioners 21 years and older be eligible regardless of their status when the principal's Form I-918 U petition is filed.

The language of the statute provides that "the spouse of an alien who files a petition for status" is eligible for benefits; the statute does not provide benefits for future spouses. The language to which the petitioner refers concerns one item in a list: the statute provides for four groups of derivatives, one of which is siblings of an under the age of 21 petitioner who are under 18 at the time the Form I-918 U petition is filed (the other three in the list are spouse, children, and parents). The language cited by the petitioner refers to the preceding clause, "unmarried siblings under 18 years of age," and does not modify the derivative group as a whole. The regulation clarifies that the statute requires the marital relationship to exist at the time the principal's Form I-918 U petition is filed. Therefore, the beneficiary is ineligible as a qualifying family member under section 101(a)(15)(U)(ii)(II) of the Act, as explicated at section 8 C.F.R. § 214.14(f)(4).

(b)(6)

NON-PRECEDENT DECISION

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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 approval of the petition remains revoked.