



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-F-G-R-

DATE: NOV. 2, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918 SUPPLEMENT A, PETITION FOR QUALIFYING FAMILY MEMBER
OF U-1 RECIPIENT

The Petitioner seeks nonimmigrant classification of the Derivative as a qualifying family member of a U-1 nonimmigrant. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 101(a)(15)(U)(ii) of the Act 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 petition proceedings, is defined at 8 C.F.R. § 214.14(a)(10) 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 a U-1 petitioner and his or her qualifying family member must exist at the time the Form I-918 is filed and must continue to exist at the time the Form I-918 Supplement A is adjudicated.

II. FACTS AND PROCEDURAL HISTORY

The Derivative, a native and citizen of El Salvador, claims to have last entered the United States in May 2006, without admission, inspection or parole. The record indicates that a Notice to Appear

(b)(6)

Matter of R-F-G-R-

was filed with the immigration court on February 7, 2011, placing the Derivative into removal proceedings, which remain pending.

The Petitioner filed a Form I-918, Petition for U Nonimmigrant Status, on October 7, 2008, which was subsequently approved on November 20, 2009. The Petitioner later married the Derivative on [REDACTED] 2012, and filed the instant Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, on his behalf on March 25, 2013. The Director denied the Form I-918 Supplement A because the Petitioner and Derivative did not have a qualifying spousal relationship at the time the Form I-918 was filed. The Petitioner filed the instant timely appeal of the denial of Form I-918 Supplement A.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. A full review of the record does not establish the Derivative's eligibility as a qualifying family member of a U-1 petitioner. The Petitioner's claims do not overcome the Director's ground for denial and the appeal will be dismissed for the following reasons.

The Director correctly concluded that the Petitioner did not establish that the Derivative was a qualifying family member, as defined at 8 C.F.R. § 214.14(a)(10), because the couple was married after the Petitioner's Form I-918 had already been filed and approved. The regulation at 8 C.F.R. § 214.14(f)(4) specifically provides that the qualifying familial relationship between a petitioner and his or her family member seeking derivative U nonimmigrant status must exist at the time the Form I-918 is filed. Here, the Petitioner was not married to the Derivative and did not have a spousal relationship at the time the Form I-918 was filed, and therefore, she has not established that the Derivative is a qualifying family member as required.

On appeal, the Petitioner contends that the regulations do not require her and her husband to have been married at the time the Form I-918 was approved in order for the latter to satisfy the regulatory definition of qualifying family member. To the contrary, as discussed, the regulation at 8 C.F.R. § 214.14(f)(4) specifically requires the relationship between the U-1 petitioner and the qualifying family member to have existed not only at the time the Form I-918 was approved, but even earlier, "at the time the Form I-918 was filed." Upon review of the record, the Petitioner has not demonstrated a qualifying familial relationship with the Derivative as required by 8 C.F.R. § 214.14(a)(10). *See also* 8 C.F.R. § 214.14(f)(4).

IV. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

Matter of R-F-G-R-

ORDER: The appeal will be dismissed.

Cite as *Matter of R-F-G-R-*, ID# 14288 (AAO Nov. 2, 2015)