



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

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

MATTER OF A-E-G-V-

DATE: SEPT. 24, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918 SUPPLEMENT A, PETITION FOR QUALIFYING 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 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 children¹ 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:²

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.

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

² 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.

(b)(6)

Matter of A-E-G-V-

(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 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).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed her own Form I-918, Petition for U Nonimmigrant Status and the instant Form I-918 Supplement A on [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.

On appeal, the Petitioner states that, because U.S. Citizenship and Immigration Services (USCIS) actually received the Form I-918 Supplement A approximately four hours before the Beneficiary had been born 21 years earlier, the derivative petition was filed while the Beneficiary was under the age of 21.

III. 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 Form I-918 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 [REDACTED] 2012 was the date on which both the Petitioner filed her Form I-918 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.

Matter of A-E-G-V-

IV. 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.

Cite as *Matter of A-E-G-V-*, ID#14549 (AAO Sept. 24, 2015)