



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

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

MATTER OF A-G-S-

DATE: JAN. 4, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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, revoked the approval of the petition, and we dismissed a subsequent appeal. The matter is now before us on motion to reconsider. The motion will be denied.

**I. APPLICABLE LAW**

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victim's qualifying family members. For a 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 further explicated at 8 C.F.R. § 214.14(f)(4), which provides:

(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.

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 [U.S. Citizenship and Immigration Services (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

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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."

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed her Form I-918, Petition for U Nonimmigrant Status, on April 14, 2008, which the Director approved. The Petitioner married the Derivative on [REDACTED] 2010.<sup>1</sup> On June 7, 2010, the Petitioner filed the instant Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, on behalf of the Derivative. Although the Director approved the Form I-918 Supplement A, she subsequently issued a notice of intent to revoke (NOIR) the approval, and revoked the approval, finding that the petition was approved in error because the Petitioner and the Derivative were not married at the time the Petitioner filed the Form I-918. The Petitioner appealed the revocation, and we upheld the Director's decision. The Petitioner timely filed a motion to reconsider.

On motion, the Petitioner submits a brief. A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The Petitioner does not cite binding precedent decisions or other legal authority establishing that we incorrectly applied the pertinent law or agency policy, nor does she show that our prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider will be denied for the reasons discussed below. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

## III. ANALYSIS

We review these proceedings *de novo*. Under the regulation at 8 C.F.R. § 214.14(f)(4), in order for a family member of a principal U nonimmigrant to be eligible for derivative status as a "qualifying family member," the qualifying relationship must exist at the time the principal files the Form I-918. Accordingly, the Petitioner and the Derivative were required to have been married when the Petitioner filed her Form I-918. The Director revoked the erroneous approval of the petition, as the Petitioner married the Derivative subsequent to the filing date of the Form I-918.

On appeal, the Petitioner asserted that section 101(a)(15)(U)(ii) of the Act does not require that a petitioner be married to his or her derivative spouse at the time the Form I-918 is filed, but only that

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<sup>1</sup> USCIS records reflect that the Petitioner was granted lawful permanent resident status on November 14, 2013. The Petitioner subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the Derivative, which has been approved ([REDACTED]).

the relationship exist at the time the Form I-918 Supplement A is filed. On motion, the Petitioner raises the same argument we addressed in our previous decision, without citing binding precedent decision or other legal authority establishing that we incorrectly applied the pertinent law or agency policy. Nor does she show that our prior decision was erroneous based on the evidence of record at the time.

Previously on appeal, and currently on motion, the Petitioner states that our regulation at 8 C.F.R. § 214.14(f)(4) misinterprets the corresponding statutory language, in that we ignore the principle of statutory construction enunciated in *Andrieu v. Ashcroft*, 253 F.3d 477 (9<sup>th</sup> Cir. 2001), which provides, in part, that when Congress includes particular language in one section of a statute, and excludes it in another section of the same statute, “it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (Internal citations omitted). The Petitioner asserts that, under this principle of statutory construction, the Derivative is eligible for the benefit regardless of whether he was married to the Petitioner when the Form I-918 was filed, because section 101(a)(15)(U)(ii)(I) of the Act contains a time limitation on when a qualifying relative may be deemed eligible for the benefit that is not contained in section 101(a)(15)(U)(ii)(II) of the Act, under which the instant petition was filed.<sup>2</sup> As we explained in our decision dismissing the appeal, incorporated here by reference, the Petitioner’s interpretation of the statutory sections does not take into account that the restriction in section 101(a)(15)(U)(ii)(I) modified only the category of “unmarried siblings under 18 years of age *on the date on which such alien applied for status*,” and not also the “spouse and children” under the same clause. Accordingly, the statutory principle of construction cited by the Petitioner does not apply in the instant case.

Further, it is presumed that Congress is aware of USCIS regulations at the time it passes a law. *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988). Section 101(a)(15)(U)(i) of the Act provides that the spouse of a petitioner is eligible for derivative benefits. The regulation at 8 C.F.R. § 214.14(f)(4) clarifies that the marital relationship must exist at the time the principal’s Form I-918 is filed. When Congress amended the law in 2013, it did not change the regulation at 8 C.F.R. § 214.14(f)(4), which requires the spouse beneficiary to be married to the principal at the time the principal’s Form I-918 is initially filed.<sup>3</sup> Accordingly, as the Petitioner did not marry the Derivative until after the filing date of the Form I-918, the Derivative is ineligible as a qualifying family member under section 101(a)(15)(U)(ii)(II) of the Act and the corresponding regulation at 8 C.F.R. § 214.14(f)(4).

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<sup>2</sup> Section 101(a)(15)(U)(ii)(I) of the Act provides that a victim petitioner under 21 years old may file for his or her “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). Section 101(a)(15)(U)(ii)(II) provides that a victim petitioner over 21 years old may file for his or her “spouse and children.”

<sup>3</sup> Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (March 7, 2013); *see also*, USCIS June 15, 2014, Policy Memorandum, *Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions*.

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#### 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). Here, that burden has not been met.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of A-G-S-*, ID# 15105 (AAO Jan. 4, 2016)