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

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

MATTER OF E-F-V-

DATE: SEPT. 26, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, who seeks "U-1" nonimmigrant classification for himself, also seeks U-4 nonimmigrant classification of the Derivative as a qualifying family member of a person granted U-1 status. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii). The U classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity, and affords derivative status for qualifying family members.

The Director, Vermont Service Center, denied the Form I-918A, Petition for Qualifying Family Member of U-1 Recipient (derivative petition), concluding that the Derivative, his parent, was not a qualifying family member because the Petitioner was over the age of 21 at the time he filed his own Form I-918, Petition for U Nonimmigrant Status (U petition).

The matter is now before us on appeal. The Petitioner asserts, in part, that the date of filing the principal's U petition does not control whether the Derivative is a qualifying family member.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Age determinations for U petitioners and their qualifying family members are specified at section 214(p)(7) of the Act, 8 U.S.C. § 1184(p)(7). If a U petitioner is 21 years of age or older at the time of filing his or her own U petition, only the petitioner's spouse and children are eligible for derivative status as qualifying family members. *See* sections 101(a)(15)(U)(ii)(II) and 214(p)(7)(B) of the Act.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

On May 7, 2013, when he was [redacted] years old, the Petitioner filed his own U-1 petition, and concurrently filed a derivative petition on behalf of his mother as a qualifying family member (U-4). The Director denied the derivative petition because the Petitioner was over the age of 21 when he filed his U petition, and only spouses and children are qualifying family members when the U

petitioner is 21 years of age or older. On appeal, the Petitioner asserts that the Director should have considered his age as of the date that the qualifying criminal activity occurred, not his age as of the date he filed his U petition.

III. ANALYSIS

On appeal, the Petitioner cites to 8 C.F.R. § 214.14(a)(10) in support of his assertion that, because he was under the age of 21 at the time of the qualifying crime, his mother is a qualifying family member. The regulation at 8 C.F.R. § 214.14(a)(10) states that “in the case of an *alien victim under the age of 21* who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, qualifying family member means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien (emphasis added).” The Petitioner notes that this particular regulation does not contain the phrase “at the time of filing” to qualify the phrase “alien victim under the age of 21” and that, reading the U nonimmigrant regulations as a whole, it is clear that the age of the victim at the time the qualifying crime occurred is controlling for defining a parent as a qualifying family member. The Petitioner also cites to 8 C.F.R. § 214.14(f)(4)(ii), stating that this regulation specifically uses the phrase “at the time of filing” to define unmarried siblings as qualifying family members.

The plain language of section 101(a)(15)(U)(ii) of the Act does not support the Petitioner’s assertion that, when determining who may be considered a qualifying family member, the age of the U-1 petitioner relates back to when the qualifying criminal activity occurred. Section 101(a)(15)(U)(ii) of the Act specifies who may be considered qualifying family members and states, in pertinent part:

if accompanying, or following to join, *the alien described in clause (i)--*

.....

(II) in the case of *an alien described in clause (i) who is 21 years of age or older*, the spouse and children of such alien (emphasis added)[.]

An “alien described in clause (i)” of section 101(a)(15)(U) of the Act is “an alien *who files a petition for status* under this subparagraph (emphasis added)” and not, as the Petitioner argues, an “alien victim” of qualifying criminal activity. Section 101(a)(15)(U)(ii) of the Act. Thus, when read in conjunction with section 101(a)(15)(U)(i) of the Act, section 101(a)(15)(U)(ii) describes which family members may qualify for derivative U status based on the age of the U-1 petitioner as of the filing date of the U petition, not the age when the criminal activity occurred. Furthermore, the preamble to the U visa rule and U.S. Citizenship and Immigration Services (USCIS) policy memorandum support such a reading of the Act. *See* 72 Fed. Reg. 53014, 53025 (Sept. 17, 2007) (providing that parents are only considered qualifying family members if the principal is under 21 years of age at the time of filing the U-1 petition and a “child” as defined in section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2)); *see also* USCIS Policy Memorandum PM-602-0102: *Policy Memorandum: Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions* (April 15, 2015), www.uscis.gov/laws/policy-

memoranda (providing that a parent may be considered a qualifying family member of a principal U petitioner only if the U petitioner is under the age of 21 when the U-1 petition is filed).

As part of his argument that the date of the qualifying criminal activity is relevant to whether his parent can be considered a qualifying family member, the Petitioner cites to language at 8 C.F.R. § 214.14(b)(2) regarding possession of information about the qualifying criminal activity. According to this regulation, if a victim of qualifying criminal activity is under the age of 16, then a parent “may possess the information regarding a qualifying crime.” This regulation, however, relates to the eligibility criterion at section 101(a)(15)(U)(i)(II) of the Act for determining U-1 status, not the criteria relating to derivative U-4 status at section 101(a)(15)(U)(ii), which the Petitioner is seeking for his mother. As we stated earlier in this decision, age determinations for individuals seeking U-1 and derivative U status are provided for at section 214(p)(7) of the Act, which was added by section 805(a) of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (March 7, 2013). Although VAWA 2013 added age-out protections for U petitioners and their qualifying family members, it retained the original statutory language describing a U-1 petitioner as “an alien described in clause (i),” or “an alien who files a petition for [U-1] status.” Therefore, because the Petitioner was 22 years old when he filed his own U petition, his mother is ineligible for derivative U-4 status because she is not the “parent of a U-1 alien who is a child under 21 years of age.” 8 C.F.R. § 214.14(f)(1).

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. See section 291 of the Act, 8 U.S.C. § 1361; see also *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 E-F-V-ID# 11473* (AAO Sept. 26, 2016)