



U.S. Citizenship
and Immigration
Services

[REDACTED]

D15

Date: DEC 19 2012 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for for a Qualifying Family Member of a 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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her daughter. The petitioner's U nonimmigrant status petition (Form I-918) remains pending with the Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification of her daughter 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 denied the Form I-918 Supplement A because the beneficiary was over the age of 21 years when the Form I-918 Supplement A was filed and, therefore, she no longer meets the definition of a child at section 101(b)(1) of the Act. On appeal, counsel submitted a Notice of Appeal, (Form I-290B), indicating that a brief or other evidence would be submitted within 30 days, or by July 11, 2012.¹ To date, over four months later, the AAO has received no further brief or evidence from counsel or the petitioner. Counsel submitted an attachment to the Notice of Appeal in which he states that the director incorrectly concluded that the beneficiary was not "an applicant for a U visa in her own right."

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

- (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
 - (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
 - (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
 - (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
 - (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
- (ii) if accompanying, or following to join, the alien described in clause (i)--

* * *

¹ On the Notice of Appeal, (Form I-290B), counsel wrote in a deadline of July 25, 2012 to brief the issues. Counsel's requested deadline has also passed by more than four months as of this date.

(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[.]

The regulation at 8 C.F.R. § 214.14(a)(10) defines a qualifying family member as, in pertinent part:

in the case of an alien victim 21 years of age or older . . . the spouse or child(ren) of such alien.

Regarding the admission of a qualifying family member, the regulation at 8 C.F.R. § 214.14(f)(1) states, in pertinent part:

To be eligible for . . . U-3 [(child)] . . . nonimmigrant status, it must be demonstrated that:

(i) The alien for whom . . . U-3 . . . status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

(ii) The qualifying family member is admissible to the United States.

* * *

Regarding the definition of a *child*, section 101 of the Act states, in pertinent part:

(b) As used in titles I and II-

(1) The term "child" means an unmarried person under twenty-one years of age

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Factual and Procedural History

On August 1, 2011, the petitioner filed a Form I-918 Supplement A on behalf of the beneficiary. On the Form I-918 Supplement A, the petitioner indicated that the beneficiary was born on October 21, 1989. On May 18, 2012, the director denied the Form I-918 Supplement A because the beneficiary did not meet the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10) because she was over 21 years of age at the time of filing.

On appeal, counsel states that "there is nothing in the statute which prevents [the beneficiary] from being either an applicant or a beneficiary"

Analysis

The relevant evidence submitted below fails to establish that the petitioner met the definition of a qualifying family member at the time the Form I-918 Supplement A was filed. The beneficiary turned 21 years of age on October 21, 2010, and the Form I-918 Supplement A was not filed until August 1, 2011. The statute and regulations permit no exception to the requirement that the beneficiary meet the definition of a qualifying family member and we lack authority to waive the requirements of the statute and the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Counsel contends that the beneficiary is eligible for U-1 nonimmigrant status as a principal petitioner in her own right. However, the matter presently before the AAO is the beneficiary's eligibility to derive U-3 nonimmigrant status from her mother based upon the filing of a Form I-918 Supplement A on her behalf. The beneficiary has not filed her own Form I-918 U petition seeking U-1 nonimmigrant status and, therefore, counsel's claim that the beneficiary is eligible for U-1 nonimmigrant status is without merit. The beneficiary does not qualify for relief as the child of the petitioner because the relationship between the petitioner and the qualifying family member must exist at the time of filing. 8 C.F.R. § 214.14(f)(4). At the time of filing, the beneficiary was no longer a child as defined under section 101(b)(1) of the Act. Consequently, the beneficiary cannot be classified as a qualifying family member at 8 C.F.R. § 214.14(a)(10) and we find no error in the director's decision denying the Form I-918 Supplement A.

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4), (f)(5). Here, that burden has not been met as to the petitioner's daughter's eligibility for U-3 nonimmigrant status as a qualifying family member (child).

ORDER: The appeal is dismissed. The Form I-918 Supplement A remains denied.