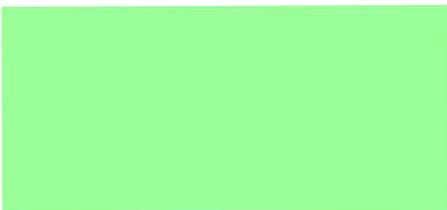


(b)(6)

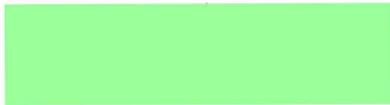
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

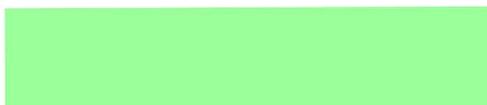


U.S. Citizenship  
and Immigration  
Services



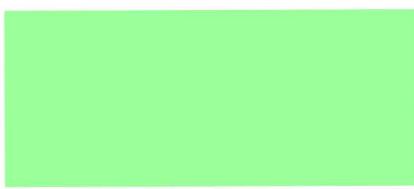
JAN 22 2014

Date: Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER:   
BENEFICIARY: 

PETITION: Petition for U Nonimmigrant Classification for Qualifying Family Member of 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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

*for* Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), approved the petitioner's Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) but denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of his child. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification of his child 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 when the petitioner filed the petition. On appeal, counsel submits a Notice of Appeal (Form I-290B), a statement, and additional documents.

#### *Applicable Law*

Section 101(a)(15)(U) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victims' qualifying family members. For an alien victim of certain criminal activity who is at least 21 years old, section 101(a)(15)(U)(ii) of the Act defines a qualifying family member as the victim's spouse and children. Section 101(b)(1) of the Act defines a child, in part, as "an unmarried person under twenty-one years of age . . . ." *See also* 8 C.F.R. § 214.14(a)(10) (defining qualifying family members as the spouse and child(ren) of adult U nonimmigrants). To be eligible for derivative status, the beneficiary must be, at the time the Form I-918 Supplement A is filed, "a qualifying family member." 8 C.F.R. § 214.14(f)(1)(i).

#### *Factual and Procedural History*

On November 28, 2011, the petitioner filed a Form I-918 Supplement A on behalf of his son, who was 20 years old at the time.<sup>1</sup> On January 27, 2012, the director denied the Form I-918 Supplement A because the petitioner's Form I-918 U petition had been denied. The petitioner did not file an appeal of this decision. On February 28, 2012, the petitioner filed the instant Form I-918 Supplement A on behalf of his son, who was 21 years old at the time. On April 19, 2013, the director denied the Form I-918 Supplement A because the petitioner's son did not meet the definition of a child at the time he filed the Form I-918 Supplement A on his son's behalf.

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<sup>1</sup> The beneficiary's birthdate is December 15, 1990.

*Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Based on the evidence in the record, we find no error in the director's decision to deny U-3 nonimmigrant status to the beneficiary as he was not under the age of 21 years when the Form I-918 Supplement A was filed.

On appeal, counsel contends that the director erred in denying the Form I-918 Supplement A because the beneficiary was under the age of 21 at the time that the petitioner was a victim of the qualifying criminal activity. In addition, counsel notes that the petitioner filed the first Form I-918 Supplement A before the beneficiary reached the age of 21. The regulation at 8 C.F.R. § 214.14(f)(1)(i) specifically states that at the time the Form I-918 Supplement A is filed, the beneficiary must be a qualifying family member. A qualifying family member of a victim of certain criminal activity is the victim's spouse or child. *See* section 101(a)(15)(U)(ii). Section 101(b)(1) of the Act defines a child, in part, as "an unmarried person under twenty-one years of age . . . ." The beneficiary was under the age of 21 when the first Form I-918 Supplement A was denied by the director; however, no appeal was filed on that decision. When the second Form I-918 Supplement A was filed, the beneficiary was no longer under the age of 21. Therefore, the beneficiary may not be classified as a qualifying family member pursuant to section 101(a)(15)(U)(ii) of the Act.

Counsel also claims that U.S. Citizenship and Immigration Services (USCIS) should use the "Stop Time Rule" as used in Section 240A(d)(1) regarding Cancellation of Removals." However, section 240A(d) of the Act pertains to removal proceedings and the special rules relating to continuous residence or physical presence for cancellation of removal, and does not apply to U nonimmigrant visas.

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 appeal is dismissed. The petition remains denied.