



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

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

In Re: 21819073

Date: APR. 20, 2022

Motion on Administrative Appeals Office Decision

Form I-918 – Supplement A, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, who was granted “U-1” nonimmigrant classification for herself, also seeks U nonimmigrant classification of the Derivative, her son, 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) (discussing eligibility requirements for derivative status for spouse, child, parent, and sibling). The Director of the Nebraska Service Center denied the Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient (U derivative petition), and a subsequent motion to reopen, concluding that the Petitioner had not established that, as required, the Derivative was a qualifying family member at the time of filing. A subsequent appeal filed by the Petitioner was dismissed by our office. This matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits a brief and additional evidence asserting the Derivative’s eligibility. Upon review, we will dismiss the motion.

**I. LAW**

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must 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. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

Section 101(a)(15)(U) of the Act provides U nonimmigrant classification to victims of certain criminal activity (U principals) and their qualifying family members (U derivatives). *See* Section 101(a)(15)(U)(ii)(II) of the Act (providing that, in the case of U principals over the age of 21—as here—qualifying family members include the U principal’s “spouse and children”); 8 C.F.R. § 214.14(a)(10) (same).

The term “child” is defined as “an unmarried person under [21] years of age.” Section 101(b)(1) of the Act. However, the Act allows for limited age protections for U derivatives, most relevantly providing that:

An unmarried [derivative] 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 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 [derivative] attains 21 years of age after such parent's petition was filed but while it was still pending.

Section 214(p)(7)(A) of the Act, 8 U.S.C. § 1184(p)(7)(A). Accordingly, a U derivative who was unmarried and under the age of 21 on the date that the U principal's underlying petition was filed will not "age out"—or be deemed ineligible for U nonimmigrant classification based solely on age—if he or she turns 21 during the adjudication process.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

The U derivative petition filed by the Petitioner on behalf of the Derivative was date-stamped by U.S. Citizenship and Immigration Services (USCIS) as received on [ ] 2015. USCIS further issued the Petitioner a Form I-797C, Notice of Action, advising her of the [ ] 2015 receipt date. With the U derivative petition, the Petitioner submitted the Derivative's birth certificate establishing that he was born on [ ] 1994. Because the Derivative turned 21 years of age on [ ] 2015, and the underlying U principal petition and U derivative petition were filed three days later on [ ] 2015, the Director denied the U derivative petition, determining that the Derivative did not meet the definition of a qualifying family member as defined by the Act and implementing regulations. As noted, the Petitioner's motion to reopen was also dismissed by the Director and we dismissed her subsequent appeal for the same reason.

On motion, the Petitioner submits a U.S. Postal Service certified mail tracking receipt indicating that the U derivative petition was received by USCIS on [ ] 2015, at 1:36pm. The Petitioner argues, through counsel, that the Derivative's birth certificate indicates that he was born at midnight on the evening of [ ] 1994, and that this establishes that the petition was received "over 10 hours earlier than [the Derivative's] birthdate." Although we acknowledge the receipt of this new evidence indicating that the Derivative petition was received by USCIS on [ ] 2015, as opposed to [ ] 2015, the Petitioner has still not established the Derivative's eligibility as a qualifying relative at the time of filing because he turned 21 years of age on such date.

The language of the statute provides that, when determining the "age" of a U derivative, we look to the "the *date* on which [the U principal] petitioned for [his or her] status." Section 214(p)(7)(A) of the Act (emphasis added). If the U derivative was "*under* 21 years of age on [such] *date*," he or she continues to be classified as a child for purposes of U classification. *Id.*; *see also* section 101(b)(1) of the Act (defining "child" as "an unmarried person under [21] years of age."). Because [ ] 2015 was the date upon which the Derivative turned 21 years of age, the Derivative cannot be considered "under the age" of 21 as required by the statute on that date. Following from this conclusion, the

Derivative was not a “child” on the date of filing and, as a result, does not meet the definition of a qualifying family member for U nonimmigrant classification.

### III. CONCLUSION

The Petitioner has not demonstrated, as required, that the Derivative was a qualifying family member at the time that the principal U petition and Supplement A were filed.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.