



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

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

In Re: 25428191

Date: APR. 4, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner was granted “U-1” nonimmigrant classification,¹ and now seeks “U-2” 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) (discussing eligibility requirements for derivative status for spouse, child, parent, and sibling). The Director of the Vermont Service Center denied the Form I-918 - Supplement A, Petition for Qualifying Family Member of U-1 Recipient (Supplement A), and the matter is now before us on appeal.

In these proceedings, it is the Petitioner’s burden to establish the Derivative’s eligibility for the requested benefit. 8 C.F.R. § 214.14(f)(1)(ii), (f)(3)(ii), (f)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter de novo. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the matter to the Director for further proceedings.

Approval of the Supplement A is contingent upon the approval of the underlying Form I-918, Petition for U Nonimmigrant Status (U petition). *See* 8 C.F.R. § 214.14(a)(10), (f)(1) (defining qualifying family member and outlining eligibility requirements for derivative U nonimmigrant status). The qualifying family relationship must exist when the principal petitioner’s U petition, is favorably adjudicated; when the U derivative petition is filed, when the U derivative petition is adjudicated; and at the time of the family member’s admission as a U nonimmigrant. 8 C.F.R. § 214.14(f)(4). Under section 214(p)(6) of the Act, a petitioner’s U nonimmigrant status shall be extended during the pendency of an application for adjustment of status under section 245(m) of the Act.

In June 2013, the Petitioner filed a U petition, seeking “U-1” nonimmigrant classification as a victim of qualifying criminal activity. The Director granted the U petition, and the Petitioner was granted U-1 status from October 2015 until September 2019.

¹ U nonimmigrant classification affords nonimmigrant status to victims of certain crimes who assist law enforcement authorities in investigating or prosecuting the crime and affords derivative status for qualifying family members. Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p).

In September 2019, the Petitioner timely filed a Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), with U.S. Citizenship and Immigration Services (USCIS).² Consequently, his U nonimmigrant status was extended and remains valid until a decision is made on his U adjustment application. USCIS records confirm that the Petitioner's U adjustment application is pending.

In June 2013, the Petitioner filed the first Supplement A on the Derivative's behalf. In June 2019, the Director approved the Supplement A, and the Derivative was granted U-2 nonimmigrant status from July 2019 until September 2019.³ In October 2016, while the first Supplement A was pending, the Petitioner filed a second Supplement A, which the Director denied in July 2020. The Petitioner filed a third Supplement A filed in May 2021, which the Director denied in April 2022. The third Supplement A is the subject of this appeal.

The Director denied the third Supplement A noting that the Derivative was previously granted U-2 nonimmigrant status, and the regulation specifies that USCIS will "only grant one nonimmigrant or immigrant status at a time." In support of the decision, the Director cited the supplementary language in part, as follows, "[w]here multiple applications or petitions are filed and pending at the same time, USCIS will grant the status for the application or petition that is approved first. USCIS will deny any remaining petitions or applications for status." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53023 (Sept. 17, 2007).

On appeal, the Petitioner argues that this supplementary language is only applicable to multiple applications or petitions that are pending concurrently. We agree with the Petitioner. At the time the May 2021 Supplement A was filed on her behalf, the Derivative did not have any other pending immigrant or nonimmigrant petitions or applications, and in particular, no other Supplement A. Therefore, the Petitioner is not precluded from filing another Supplement A on the Derivative's behalf, as long as the Petitioner has neither adjusted his status to that of a lawful permanent resident, nor had his U-1 status revoked. Moreover, the Derivative's U-2 nonimmigrant status expired in September 2019, and to date, it has not been extended.

The record establishes that the Petitioner has maintained valid U nonimmigrant status, and therefore, a qualifying family relationship exists between the Petitioner and the Derivative. As the sole ground for denial has been overcome, we will remand the matter for the Director to determine whether the Derivative otherwise meets the eligibility requirements for U nonimmigrant classification.

ORDER: The Director's decision is withdrawn, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.

² Although the Petitioner erroneously indicated that he was filing for adjustment of status based on the asylum category, a status that the Petitioner does not hold, this error in his U adjustment application has since been corrected by USCIS and reconciled with the record.

³ In May 2021, the Derivative filed Form I-539, Application to Extend/Change Nonimmigrant Status (Form I-539) seeking to extend her U-2 nonimmigrant status. The Form I-539 was denied in April 2022 on the basis of abandonment.