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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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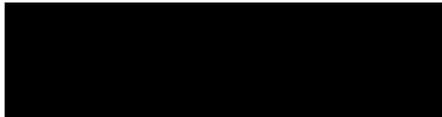
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FILE: [Redacted]
EAC 01 129 50176

Office: Vermont Service Center

Date: DEC 08 2004

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iv)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iv), as the battered child of a citizen of the United States.

The director determined that the petitioner failed to establish that he is the child of a citizen or lawful permanent resident of the United States, pursuant to 8 C.F.R. 204.2(e)(1)(i)(A), because he is over the age of 21 years. The director, therefore, denied the petition.

On appeal, the petitioner claims that his stepfather had filed a petition on behalf of his mother, his sister, and himself in 1997 when he was under the age of 21. He states that he is being punished twice; therefore, he requests reconsideration of the I-360 petition.

8 C.F.R. 204.2(e)(1) states, in pertinent part, that:

(i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the child of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character; and

(G) Is a person whose deportation (removal) would result in extreme hardship to himself or herself.

(ii) Parent-child relationship to the abuser. The self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed and when it is approved....

The petition, Form I-360, shows that the petitioner arrived in the United States during August 1996. However, his current immigration status or how he entered the United States was not shown. On March 21, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen parent while residing with that parent.

8 C.F.R. 204.2(e)(1)(i)(A) requires that the self-petitioner must establish that he is the child of a citizen or lawful permanent resident of the United States.

Section 101(b)(1) of the Act defines the term "child" to mean an unmarried person under 21 years of age. The record reflects that the petitioner was born in Mexico on June 21, 1979. On March 21, 2001, nine months after the petitioner had turned 21 years of age, he filed this self-petition. The director, therefore, denied the petition on April 17, 2001, after determining that the petitioner did not qualify as the child of a U.S. citizen because he was over 21 years of age.

While the petitioner, on appeal, claims that his stepfather had filed a petition on his behalf when he was under the age of 21, the petitioner filed Form I-360 petition for benefits under section 204(a)(1)(A)(iv) of the Act as a battered child. This petition is adjudicated accordingly.

8 C.F.R. 204.2(e)(1)(ii) provides that the self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed. For this reason, the petition may not be approved.

The petitioner is statutorily ineligible for the benefit sought pursuant to section 204(a)(1)(A)(iv) of the Act. He has, therefore, failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(e)(1)(i)(A).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.