



B9

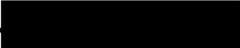
U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



copying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

DEC 08 2002

FILE:   
EAC 00 270 50131

Office: Vermont Service Center

Date:

IN RE: Petitioner:  
Beneficiary:



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

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**DISCUSSION:** The preference visa petition was revoked by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal.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)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(iii), as the battered child of a lawful permanent resident of the United States.

The director revoked the approval of the visa petition after determining that the petitioner failed to establish that she 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 she was over the age of 21 years when the petition was filed.

On appeal, the petitioner states that she disagrees with the director's decision on the basis that she was listed as a derivative beneficiary on a Form I-360 petition filed by her mother on August 16, 1999. She further states that she was also a derivative beneficiary on her mother's Form I-130 relative petition filed in her behalf and approved on August 31, 1994.

Section 205 of the Act, 8 U.S.C. 1155, states, in pertinent part, that:

The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such 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 May 1986. However, her current immigration status or how she entered the United States was not shown. On August 31, 2000, 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, her permanent resident parent while residing with that parent. The petition was approved by the Vermont Service Center on October 20, 2000.

8 C.F.R. 204.2(e)(1)(i)(A) requires that the self-petitioner must establish that she 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 July 5, 1979. On August 31, 2000, 26 days after the petitioner had turned 21 years of age, she filed this self-petition. The director, therefore, revoked the approval of the petition on July 18, 2001, after determining that the petitioner did not qualify as the child of a lawful permanent resident because she was over 21 years of age when the petition was filed.

While the petitioner, on appeal, claims that she was listed as a derivative beneficiary on a Form I-360 petition filed by her mother on August 16, 1999, the record reflects that the Form I-360

petition was filed by the petitioner's stepfather in behalf of the petitioner's mother based on a claim of eligibility as a "Special Immigrant International Organization Employee or family member." The petitioner's mother subsequently filed a Form I-360 petition claiming to be the battered spouse of a permanent resident alien on September 12, 2000, approximately one month after the petitioner had turned 21 years of age. Furthermore, while the petitioner claims that she was also a derivative beneficiary on her mother's Form I-130 relative petition filed in her behalf and approved on August 31, 1994, when she 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)(B)(iii) of the Act. She 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.