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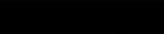
U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

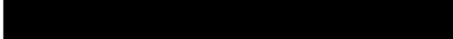


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prevent clearly unwarranted
invasion of personal privacy.

FILE: 
EAC 99 019 53356

Office: Vermont Service Center

Date: JUN 18 2001

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, Acting 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 case will be remanded to the director for further action.

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) or section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iv) or 8 U.S.C. 1154(a)(1)(B)(iii), as the battered child of a citizen or lawful permanent resident of the United States.

The director determined that the petitioner failed to submit evidence as had been requested to establish that he is a person of good moral character. The director, therefore, denied the petition.

On appeal, the petitioner states that he never received the director's June 21, 1999 notification for additional evidence as stated in his denial. He further states that in July 1999, he submitted additional information, including "clearance record," in support of his case. While the petitioner indicates that he is attaching a copy of the "clearance record" he previously sent to the Service, this document was not included with the appeal.

8 C.F.R. 204.2(e)(1), in effect at the time the self-petition was filed, 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.

The petition, Form I-360, shows that the petitioner arrived in the United States in October 1982. However, his current immigration status or how he entered the United States was not shown. On October 19, 1998, 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 or lawful permanent resident parent while residing with that parent.

8 C.F.R. 204.2(e)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character. 8 C.F.R. 204.2(e)(2)(v) provides:

Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of good moral character.

The record reflects that the applicant was requested on February 5, 1999, and again in a notice of intent to deny the petition on June 21, 1999, to submit evidence of his good moral character. Examples of evidence the petitioner may submit to establish good moral character under 8 C.F.R. 204.2(e)(2)(v) were listed by the director in his request for additional evidence. Because the petitioner failed to comply, the director denied the petition.



The applicant, on appeal, asserts that he did not receive any of the director's requests for additional evidence. A further review of the record of proceeding reflects that the director's February 5, 1999 request for evidence was sent to the petitioner in care of his attorney. On April 10, 1999, the attorney notified the Service that he was withdrawing from the representation of the petitioner and to send future notices of any Service action to the petitioner. However, on June 21, 1999, the director's notice of intent to deny was again sent to the petitioner in care of his attorney.

Accordingly, the case will be remanded so that the director may accord the applicant an opportunity to submit the required documents. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.