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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

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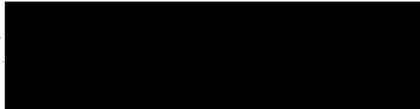
DEC 29 2003

FILE: [Redacted]
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Office: Vermont Service Center

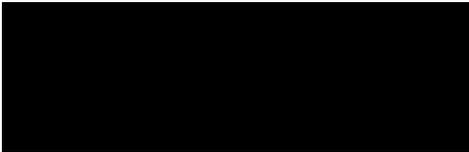
Date:

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:



Identifying data related to
prevent disclosure of warranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
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 Administrative Appeals Office 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 had not provided sufficient evidence 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). The director, therefore, denied the petition.

On appeal, counsel asserts that there was an equitable adoption of the petitioner by [REDACTED] (the petitioner's U.S. citizen sister), that the petitioner and Ms. [REDACTED] were in an *in loco parentis* relationship sufficient to meet the Violence Against Women Act of 1994 (VAWA) requirements, and that a parent/child relationship existed between the petitioner and Ms. [REDACTED] pursuant to section 6454 of the California Probate Code.

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.

The petition, Form I-360, shows that the petitioner arrived in the United States on October 2, 1993. However, his current immigration status or how he initially entered the United States was not shown. On June 3, 2002, 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)(ii) provides, in part:

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.

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines the term "child" to mean an unmarried person under twenty-one years of age who is ---

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years.

The director reviewed the evidence furnished to establish that the petitioner is the child of a citizen or lawful permanent resident of the United States. He noted that the petitioner was not adopted by [REDACTED] prior to reaching the age of sixteen years. The director determined that although counsel indicated that there was, at a minimum, an equitable adoption or establishment of an equitable *in loco parentis* relationship to establish eligibility, and that California law recognizes the application of the doctrine of equitable adoption for the benefit

of the child, CIS does not recognize this as a legal adoption for immigration purposes.

On appeal, counsel reiterates that there was an equitable adoption of the petitioner by his U.S. citizen sister, that the petitioner and his sister were in an *in loco parentis* relationship sufficient to meet VAWA requirements, and that a parent/child relationship existed between the petitioner and his sister pursuant to section 6454 Cal. Prob. Code. Counsel states that pursuant to section 6454, the relationship of parent and child exists between that person and the person's foster parent or stepparent, if both the following requirements are satisfied: (1) the relationship must have begun "during the person's minority and continued throughout the joint lifetimes of the person and the person's foster parent or stepparent;" and (2) it must be "established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier."

The record in this case reflects that the petitioner and his mother resided with the petitioner's sister (Ms. [REDACTED] from October 1993 until the death of their mother on January 13, 1998. The petitioner subsequently left the home of Ms. [REDACTED] in October 1998. Although the petitioner was residing in the home of Ms. [REDACTED] for a period of five years, there is no evidence that there was an intent by Ms. [REDACTED] to adopt the petitioner. Nor was there evidence of a legal barrier, as provided in section 6454 Cal. Prob. Code, to adopt the petitioner. Furthermore, there is no evidence that the petitioner was in the legal custody of Ms. [REDACTED] pursuant to section 101(b)(1) of the Act.

Accordingly, the petitioner has failed to establish that he qualifies as the abuser's child under the definition of "child" contained in section 101(b)(1) of the Act, and as provided in 8 C.F.R. § 204.2(e)(1)(ii). The petitioner has failed to overcome the director's findings pursuant to 8 C.F.R. § 204.2(e)(1)(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.