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FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

EAC 03 020 50376

IN RE:

Petitioner: [Redacted]

Beneficiary: [Redacted]

PETITION:

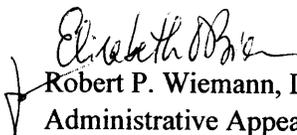
Petition for Special Immigrant Battered Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


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 (AAO) 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 United States citizen.

The director denied the petition, finding that the petitioner is over the age of 21 years and is therefore ineligible for the desired classification.

On appeal, counsel for the petitioner claims that the petitioner is eligible for the classification because a Form I-130 petition for Alien Relative was filed on her behalf before she reached age 18 and the Child Status Protection Act of 2002 protects the petitioner.

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, that:

[A]n alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

The regulation at 8 C.F.R. § 204.2(e) states, in pertinent part:

Self-petition by child of abusive citizen or lawful permanent resident—(I) Eligibility. (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

- (A) Is the child of 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 . . . 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.

The record of proceedings indicates that the petitioner initially entered the United States without inspection on October 5, 1989. According to the evidence on the record, the petitioner was born on July 24, 1979 to [REDACTED] and [REDACTED] in Mexico; her father, [REDACTED] was born in Texas and he is a United States citizen. According to the evidence on the record, [REDACTED] filed a Form I-130 petition on the petitioner's behalf on January 14, 1998, that was approved on October 20, 1998. The petitioner filed a Form I-360 petition on October 13, 2002.

The director denied the Form I-360 petition, finding that the petitioner was ineligible for classification as a battered child of a United States citizen because she was over 21 years of age when she filed the petition.

On appeal, counsel for the petitioner asserts that the Child Status Protection Act (CSPA) protects or preserves the petitioner's priority date and exempts the petitioner from meeting the statutory age requirement. Counsel asserts that since the petitioner would be protected by CSPA under a normal family based petition (Form I-130/Form I-485), she should be protected under a battered child petition (Form I-360).

Congress enacted the Child Status Protection Act in 2002, Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002) to provide for continued classification of certain aliens as children in cases where the aliens "age out" – turn 21 years of age – while awaiting immigration processing. In other words, the law was enacted to prevent children from "aging-out" due to CIS delays.¹ Section 204(a)(1)(D)(i) of the Act, 8 U.S.C. § 1154 (a)(1)(D)(i) clearly indicates that the Form I-360 petition must have been filed or approved before the child turns 21, in order for the petitioner to continue to be considered as a child under the Act.

The petitioner filed a Form I-360 petition on October 13, 2002, more than two years after she turned 21 years of age. The Child Status Protection Act is inapplicable in the instant case. There is no question of "aging out" between the time she filed the Form I-360 petition and the date of adjudication of the Form I-360 petition. The stated purpose of CSPA is to permit an applicant for certain benefits to *retain* classification as a "child" under the Act, even if he or she has reached the age of 21. Here, the petitioner was over age 21 at the time of the filing of the Form I-360 petition; hence, she is statutorily ineligible for the classification.

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.

¹ See U.S. Dept. of Justice, Immigration and Naturalization Service Memorandum from Johnny Williams, Executive Associate Commissioner, Office of Field Operations, dated September 20, 2002. (HQADN706.1.1)