



U.S. Citizenship  
and Immigration  
Services

B-9

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

MAY 27 2004

PETITION:

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)

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 for*

Robert P. Wiemann, Director  
Administrative Appeals Office

ADMINISTRATIVE APPEALS OFFICE  
425 I STREET, N.W.  
BCIS, AAC, 20 MASS 3/F  
WASHINGTON, DC 20536

**PUBLIC COPY**  
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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 Poland 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 an alien lawfully admitted for permanent residence.

The director determined that the petitioner failed to establish that he qualifies for the desired classification, as the child of a citizen or lawful permanent resident of the United States, because he is over the age of 21 years. The director, therefore, denied the petition.

On appeal, counsel asserts that the Child Status Protection Act (H.R. 1209, signed into law by President Bush on August 6, 2002), establishes rules for determining whether certain aliens are children. He states that as a whole, section 203(h)(1) of the Act defines a child by their age at the time an immigrant visa number becomes available for them minus the number of days the section 204 petition was pending, provided that the child applies for adjustment within a year of the visa date becoming current. He further states that the amendments made by the Child Status Protection Act (H.R. 1209, section 8(1)) apply to "a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. § 1154) approved before such date [August 6, 2002] but only if a final determination has not been made on the beneficiary's application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition."

Counsel further asserts that the petitioner's lawful permanent resident father filed an immigrant petition (Form I-130) on behalf of the petitioner on July 17, 1992, and at the time of filing, the petitioner was unmarried and under 21 years of age. The petitioner's priority date became current on June 17, 1999, and on July 9, 1999, the petitioner applied for lawful permanent residence (Form I-485). Counsel contends that, because a final determination has not been made on the petitioner's application for adjustment to lawful permanent residence, and because the application was filed less than a year after an immigrant visa number became available, the provisions of section 203(h) of the Act apply to the petitioner; therefore, the petitioner qualifies as a self-petitioning child.

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 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

The petition, Form I-360, shows that the petitioner arrived in the United States on August 26, 1995. However, his current immigration status or how he entered the United States was not shown. On September 25, 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 lawful permanent resident 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. 8 C.F.R. 204.2(e)(1)(ii) provides, in part:

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. Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

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 Poland on May 18, 1972. On September 25, 2001, more than 8 years after the petitioner turned 21 years of age, he filed this self-petition. The director, therefore, determined that the petitioner did not qualify as the child of a lawful permanent resident because he was over the age of 21 years.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(c) amends section 204(a)(1)(B)(iii) of the Act so that any child who attains 21 years of age **who has filed a self-petition** or are derivative beneficiaries of a parent's petition no longer "age out," or lose eligibility to immigrate, when they become 21 years of age. Instead, they are treated as family preference petitioners under the appropriate category.

The petitioner, in this case, does not fall under this provision because he did not file a self-petition until more than 8 years after he turned 21 years of age.

Counsel, on appeal, asserts that the petitioner was the beneficiary of an approved Form I-130 relative petition on July 17, 1992, when he was under 21 years of age, and that the amendments made by the Child Status Protection Act apply to petitions for classification under section 204 of the Act approved before August 6, 2002. Section 203(h) of the Act relied on by counsel refers to petitions filed under sections 203(a)(2)(A) and 203(d), and derivative beneficiaries under sections 204(a), (b), or (c). The petitioner, in this case, applied for specific benefits under section 204(a)(1)(B)(iii) of the Act. His Form I-360 petition has been adjudicated accordingly.

The petitioner is, therefore, ineligible for the benefit sought, pursuant to section 204(a)(1)(B)(iii) of the Act.

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.