



U.S. Citizenship
and Immigration
Services

B-9



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted] MAY 27 2004
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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

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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 St. Lucia 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 failed to establish that she was eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on the claimed relationship. The director, therefore, denied the petition.

On appeal, counsel submits a brief.

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 record reflects that on March 18, 1999, the petitioner was legally adopted by [REDACTED]. The petitioner arrived in the United States as a visitor on August 14, 1999. On April 29, 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, her U.S. citizen adoptive parent while residing with that parent.

8 C.F.R. § 204.2(e)(1)(i)(B) provides that the self-petitioning child must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

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 and when it is approved.

Section 101(b)(1) of the Act defines, in part, 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 determined that the record shows that the petitioner was adopted by [REDACTED] on March 19, 1999, that she entered the United States on August 14, 1999, that she subsequently began residing with [REDACTED] on or about September 9, 1999, and that she moved out of [REDACTED] home in June 2000. The director, therefore, concluded that the petitioner had not established her eligibility for the desired classification because she did not meet the two-year residence requirement cited in section 101(b)(1)(E) of the Act.

On appeal, counsel asserts that although the petitioner does not dispute the findings made by Citizenship and Immigration Services (CIS) regarding the length of residence with her abusive adoptive father, she contends that she should be considered a child under the relevant sections of the Act, including section 201(b)(2)(A)(i) and/or section 203(a)(2)(A), and that the self-petition should have been approved notwithstanding these provisions of the Act, given the ameliorative purposes of the Violence Against Women Act (VAWA). Counsel further contends that CIS' decision to deny the self-petition means that the petitioner should have remained in the abusive situation for a period of more than one additional year in order to comply with the provisions of the statute and to thus qualify under 8 C.F.R. § 204.2(e), notwithstanding the danger in remaining in this abusive situation.

The director had addressed this argument of counsel. He noted in his decision that the definition of child, as cited in section 101(b)(1)(E) of the Act, was not modified or superseded by VAWA provisions; therefore, the petitioner must first still meet the definition of child to be qualified under the VAWA legislation.

The director is correct in his findings. The petitioner is statutorily ineligible for the benefit sought pursuant to section 201(b)(2)(A)(i) of the Act, and as provided in 8 C.F.R. § 204.2(e)(1)(i)(B). For this reason, the petition may not be approved.

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.