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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 10 2005  
EAC 03 226 54855

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Battered Child pursuant to 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, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(iii), 8 U.S.C. § 1154(a)(1)(B)(iii), as the battered child of a lawful permanent resident of the United States. In a decision dated August 10, 2004, the director denied the petition, finding that the petitioner was ineligible for classification as the battered child of a lawful permanent resident of the United States because he was over the age of 21 at the time of filing.

Section 204(a)(1)(B)(iii) of the act provides, in pertinent part, that:

An alien who is the child of an alien lawfully admitted for permanent residence . . . and who is a person of good moral character . . . who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the [Secretary of Homeland Security] . . . for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the [Secretary of Homeland Security] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

Section 101(b)(1) of the Act defines the term "child," in part, as "an unmarried person under twenty-one years of age . . . ."

Further, the regulation at 8 C.F.R. § 204.2(e)(ii) states, in pertinent 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.*

[Emphasis added.]

According to the evidence in the record, the petitioner was born in Mexico on May 13, 1978 to [REDACTED] and an unknown father. The petitioner entered the United States without inspection sometime on or about 1981. The petitioner was placed in removal proceedings on January 7, 2002. The removal proceedings were administratively closed on November 7, 2003 in order for the petitioner to pursue the instant petition, which was filed on August 4, 2003. At the time of filing the petition, the petitioner was over 21 years of age.<sup>1</sup>

On appeal, the petitioner, through counsel submits a statement with no additional evidence. Counsel's argument on appeal is that:

The mere fact that the adult child of a [lawful] permanent resident or U.S. citizen turns twenty one does not put [an end] to the parent child relationship and therefore the child should have the opportunity to apply as a child of a [lawful] permanent resident or U.S. citizen.

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<sup>1</sup> The petitioner was 25 years old at the time of filing.

It appears that counsel's argument is that as long as the petitioner has demonstrated the parent-child relationship prior to his 21<sup>st</sup> birthday, he is eligible for approval. The statements made by counsel on appeal are not supported by case law or other evidence which overcome the director's stated grounds for denial based upon the petitioner's statutory and regulatory ineligibility. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

We note that under the Child Status Protective Act (CSPA), if a petitioner files a petition *prior* to his or her 21<sup>st</sup> birthday, the petitioner will not be considered to "age-out" if he or she reaches the age of 21 before his or her petition is approved. However, if as in this case, the petitioner files a petition *after* his 21<sup>st</sup> birthday, the CSPA does not apply.

Further, the regulation at 8 C.F.R. § 204.2(h) states:

*Validity of Approved Petitions – (1) General.* Unless terminated pursuant to section 203(g) of the Act or revoked pursuant to part 205 of this chapter, the **approval** of a petition to classify an alien as a preference immigrant under paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of section 203 of the Act, or as an immediate relative under section 201(b) of the Act, shall remain valid for the duration of the relationship to the petitioner and of the petitioner's status as established in the petition.

[Emphasis added.]

The above regulation pertains to the validity of *approved* petitions. Contrary to counsel's statement, the petitioner did not establish any qualifying relationship prior to his 21<sup>st</sup> birthday. The record does not contain any approved petition filed in the petitioner's behalf.

Moreover, even if the petitioner were able to establish that he is the child of a lawful permanent resident, such a fact does not demonstrate *de facto* eligibility. The petitioner is still required to show that he is a person of good moral character, that he resides, or has resided in the past, with the alien's permanent resident alien parent, and that he alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent. The record contains no such evidence, including evidence that the petitioner was battered or subjected to extreme cruelty by his mother or in the alternative by a United States citizen or lawful permanent resident spouse of his mother.

Regarding counsel's remaining argument that denial of the instant petition is a violation of equal protection, the AAO observes that, like the Board of Immigration Appeals, this office cannot rule on the constitutionality of laws enacted by Congress. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992).

As cited previously, both the Act and the regulations indicate that to be eligible for classification as a "child," a petitioner must be under 21 years of age at the time of filing. As the petitioner was over the age of 21 years of age at the time of filing, his petition is ineligible for approval.

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.