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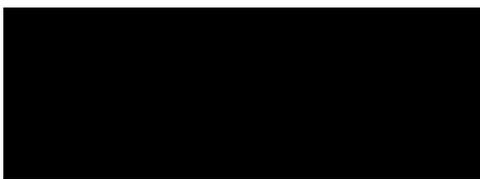
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted]
EAC 03 101 52337

Office: VERMONT SERVICE CENTER

Date: JUN 28 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



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 24-year old native of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a United States citizen. In a decision dated February 12, 2004, the director denied the petition, finding that the petitioner was ineligible for classification as the battered child of a United States citizen because he was over the age of 21 at the time of filing.

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 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.

According to the evidence in the record, petitioner was born in Mexico on September 10, 1980. The petitioner's mother wed her citizen spouse on December 3, 1994 in San Diego, California. The petitioner's stepfather filed a Form I-130 on the petitioner's behalf on June 22, 1999. The petition was approved on December 10, 1999. The petitioner filed the instant petition on February 8, 2003. At the time of filing the petition, the petitioner was over 21 years of age.

On appeal, the petitioner, through counsel submits a statement with no additional evidence. Counsel states the following as the reason for the appeal:

The memories of the domestic violence (i.e., child abuse, sodomy) by the U.S. stepfather were suppressed but happened while [redacted] [sic] was a minor. The fact that perhaps the initial filing (Form [I-360]) was after the age of twenty-one does not preclude [him] from qualifying under the Act.

Counsel also indicates that a brief and/or evidence would be submitted to the AAO within 30 days. However, as of this date, the record does not contain a supplemental appellate brief or any additional evidence. Although counsel indicated that a brief would be submitted within 30 days, counsel did not explain why the brief would be submitted late or otherwise provide good cause for granting an extension beyond thirty days. Regardless, pursuant to 8 C.F.R. § 103.3(a)(2)(vii), counsel's request for additional time to submit a brief is denied as a matter of discretion for failure to show good cause.

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).

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.