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**U.S. Citizenship  
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FILE:

[Redacted]  
EAC 03 214 51779

Office: VERMONT SERVICE CENTER

Date: AUG 21 2006

IN RE:

Petitioner:



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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien child battered or subjected to battery or extreme cruelty by her United States lawful permanent resident parent.

The director denied the petition, finding that the petitioner failed to establish that she was the child of a U.S. lawful permanent resident who had lost such status within the past two years due to an incident of domestic violence.

On appeal, counsel submits a brief.

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

An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past two years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title [section 201(b)(2)(A) of the Act], and who resides, or has resided in the past, with the alien's permanent resident alien 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 had been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

The petitioner in this case is a native and citizen of Mexico. The petitioner filed this Form I-360 on July 11, 2003. Citizenship and Immigration Services (CIS) records show that her father lost his U.S. lawful permanent residency status on June 21, 2001. Although the petitioner's father lost his status due to an incident of domestic violence, this petition was filed over two years after her father's loss of status. Accordingly, the director denied the petition on this ground on December 21, 2004. However, the director noted that the petitioner was the derivative beneficiary of her mother's Form I-360 self-petition that was approved on March 31, 1999 (Receipt number EAC 99 121 50401). With his decision in this case, the director enclosed an amended approval notice for the petitioner's mother's case, including an amended Notice of Dependent Child listing the petitioner as the derivative beneficiary of her mother's petition.

On appeal, counsel requests that the filing date of the petitioner's mother's Form I-360 be retroactively applied to the petitioner's case and claims CIS should exercise its discretion to apply a more lenient standard for children. The statute and the regulations do not provide CIS with the discretion to waive the within-two-year filing requirement of section 204(a)(1)(B)(iii) for children whose abusive parents have lost lawful permanent residency status. Moreover, counsel's contentions appear moot given the

fact that the petitioner is already the beneficiary of an approved self-petition for preference immigrant status under section 204(a)(1)(B)(ii) of the Act.

We note that the petitioner may apply for adjustment of status pursuant to sections 204(a)(1)(B)(ii) and 245(a) of the Act. In addition, the petitioner is protected from “aging-out” because when she turns 21, her status will be converted from that of a derivative to a direct beneficiary of a second-preference family-based immigrant visa petition. *See* Section 204(a)(1)(D) of the Act, 8 U.S.C. § 1154(a)(1)(D).

On appeal, counsel correctly states that the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.