

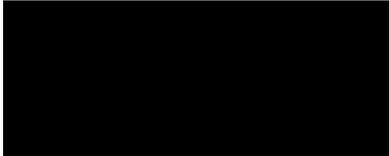
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U.S. Citizenship
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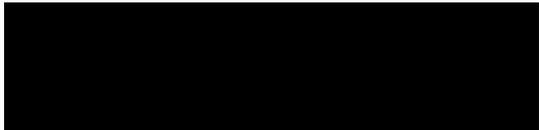
Office: VERMONT SERVICE CENTER

Date: JAN 09 2006

IN RE: Petitioner: [REDACTED]

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, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of Mexico who is seeking 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 the battered child of a lawful permanent resident of the United States.

The director denied the petition, finding that the petitioner failed to establish he has a qualifying relationship as the child of a lawful permanent resident of the United States.

Section 204(a)(1)(B)(iii) of the Act provides:

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 2 years* lost permanent resident status *due to an incident of domestic violence*, 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 . . . 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.

[Emphasis added.]

According to the evidence contained in the record, the petitioner was born in Mexico on November 11, 1991 to [REDACTED] obtain permanent resident status, his status was terminated on November 10, 1998 when he was ordered removed from the United States. The petitioner filed the instant Form I-360 on March 5, 2004 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his permanent resident parent. The director denied the petition on October 22, 2004 finding that the petitioner failed to establish that he has a qualifying relationship as the child of a lawful permanent resident of the United States.

On appeal, counsel states the following as the reason for the appeal on the Form I-290B:

The Service has denied [the petitioner's] petition because he allegedly fail [sic] to submit his petition . . . within two years immediately preceding the deportation of his father. When [REDACTED] was deported [the petitioner] was ten years old, and as a minor [REDACTED] did not have the capacity, and control of his legal affairs. Antonio has been in this country for more than ten years and except for the fact that he missed to sent [sic] his petition on time [the petitioner] is a qualified candidate under Form I-360.

In addition, counsel submits a brief in which he states that the director's decision is "unfair" because the director failed to "take into account or consideration other relevant factors which if taken as a whole would render [the petitioner] eligible for the relief sought in his petition." Counsel argues that the petitioner is eligible because he resided in the U.S. for more than 12 years with his parents, that he has been battered by or the subject of extreme cruelty while residing with his parent, that he is a person of good moral character and his deportation would result

in extreme hardship to the petitioner.¹ Counsel does not provide any argument or legal precedent which would allow the factors indicated above when “taken as a whole” to outweigh the statutory provisions. Even if we were to determine that the petitioner met all of the other eligibility requirements we are bound by the clear language of the statute which requires the petitioner to be the child of a lawful permanent resident of the United States at the time of filing or the child of a lawful permanent resident who *within the past 2 years* lost permanent resident status due to an incident of domestic violence. Counsel does not refute the fact that the petitioner’s father lost his permanent resident status or that the status was lost more than two years prior to the filing of the instant petition.

Counsel further argues that the petitioner would be eligible for relief “if he were allowed to amend his petition to the date of March 2, 1995 when his petition under Form I-130 was filed.” Counsel’s argument is without merit. The fact that the petitioner had a Form I-130 filed and approved on his behalf is not relevant to whether he meets the statutory requirements of section 204(a)(1)(B)(iii) of the Act. The priority date obtained upon the filing of the Form I-130 simply establishes an alien’s place on the “waiting list” for an immigrant visa. A priority date does not act to preserve specific facts in existence at the time the priority date was assigned. Counsel appears to be under the mistaken belief that if the priority date of the petitioner’s Form I-130 is assigned to the Form I-360, the fact that the petitioner’s father was not a lawful permanent resident within the two-year period prior to filing can be overlooked or negated.² While the existence of a priority date is relevant to the issue of adjustment, it does not waive the prima facie eligibility requirements for approval of the Form I-360 petition. The regulation is clear that the petitioner’s father’s loss of permanent resident status must have occurred within the two-year period prior to the filing of the petition. As the petitioner’s father lost his status more than two years prior to the filing of the instant Form I-360, the petitioner does not meet the statutory requirements.

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.

ORDER: The appeal is dismissed.

¹ It is noted that extreme hardship is no longer a consideration in the adjudication of a Form I-360 battered spouse or child petition. Section 1503(b) of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000) amended section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen or permanent resident is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child.

² It is noted that while the regulation at 8 C.F.R. § 204.2(h)(2) and a Service memorandum (HQ 204-P, Aleinikoff, Executive Associate Commissioner Programs, Title, (April 16, 1996)) support the transference of priority dates from petitions filed by abusers to their new self-petition “without regard to the current validity” of the previous petition, neither the regulation nor the memorandum indicate that the transference of a priority date somehow remedies the fact that the petitioner’s parent was not a lawful permanent resident in the two-year period prior to filing. Rather, the significance of the priority date is that if the instant Form I-360 was approved, the petitioner could transfer the priority date from the Form I-130 to the Form I-360.