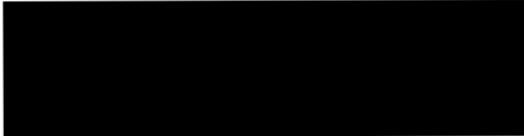


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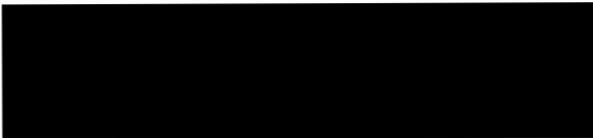
Office: VERMONT SERVICE CENTER

Date: **JUN 29 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, Chief
Administrative Appeals Office

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 rejected as untimely filed.

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), 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 on March 24, 2005, finding that the petitioner could not be classified as the child of a lawful permanent resident of the United States because the petitioner was more than twenty-one years of age at the time of filing.¹ In addition, the director found the petitioner ineligible for classification because her adoption took place *after* she had reached the age of 16.²

The record reflects that the petitioner attempted to file an appeal on the director's decision on April 26, 2005, but the filing was rejected because the appeal form was not properly signed. The regulation at 8 C.F.R. § 103.2(a)(7) indicates that an application or petition that is stamped to show the time and date of actual receipt shall be regarded as properly filed when so stamped if it is signed and executed and contains the required filing fee. An application or petition that is not properly signed or is submitted with the wrong filing fee shall be rejected and will not retain the filing date.

The petitioner's appeal was considered to be properly filed on May 13, 2005, 50 days after the decision was issued. The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the appeal within 30 days after the service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ 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.

² Section 101(b)(1)(E)(i) defines the term "child" in pertinent part as:

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 or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household