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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 30 2006

EAC 05 169 52360

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered Child of Permanent Resident 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:

SELF-REPRESENTED

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 Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a 22-year old native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii), as the battered child of a lawful permanent resident.<sup>1</sup>

The director denied the petition, finding that as of the date of the filing of the petition, the petitioner was no longer a “child” of a United States citizen or lawful permanent resident and is therefore ineligible for the desired classification. The director denied the petition, finding that the petitioner is over the age of 21 years and is therefore ineligible for the desired classification.

On appeal, counsel for the petitioner asserts that under the provisions of the Child Status Protection Act, the Form I-360 self-petition should relate back to the date then the Form I-130 petition was filed, May 22, 1997, at the time when the petitioner was under the age of 21.

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 of the United States, or who was a child of an alien lawfully admitted for permanent residence who within the past 2 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 203(a)(2)(A), and who resides, or has resided in the past, with the lawful permanent resident 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 has been the subject of extreme cruelty perpetrated by the alien’s permanent resident parent.

The regulation at 8 C.F.R. § 204.2(e) states, in pertinent part:

*Self-petition by child of abusive citizen or lawful permanent resident—Eligibility.* (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

- (A) Is the child of citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident parent;

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<sup>1</sup> Although the petitioner submitted a Form G-28 authorizing [REDACTED] and Latino Valley Immigration to represent her, we cannot recognize them because neither are accredited as required by 8 C.F.R. § 292.1(a)(4).

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character.

The petitioner indicates that she entered the United States without inspection in February 1985. According to the evidence in the record, the petitioner was born on May 17, 1983 to [REDACTED] and [REDACTED] in Iguala, Mexico. According to the evidence on the record, [REDACTED] filed a Form I-130 petition on the petitioner's behalf on May 22, 1997, that was approved on August 2, 1997 (WAC 97 161 52917). The petitioner filed a Form I-360 petition on May 17, 2005 on her 22<sup>nd</sup> birthday.

On August 12, 2005, the director denied the Form I-360 petition, finding that the petitioner was ineligible for classification as a battered child of a United States citizen or lawful permanent resident because she was over 21 years of age when she filed the petition.

Counsel for the petitioner asserts that the Child Status Protection Act (CSPA) protects or preserves the petitioner's priority date and exempts the petitioner from meeting the statutory age requirement.

Congress enacted CSPA in 2002, Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002) to provide for continued classification of certain aliens as children in cases where the aliens "age out" – turn 21 years of age – while awaiting immigration processing. In other words, the law was enacted to prevent children from "aging-out" due to CIS delays.<sup>2</sup> Section 204(a)(1)(D)(i) of the Act, 8 U.S.C. § 1154(a)(1)(D)(i) provides that the Form I-360 petition must have been filed or approved before the date on which the child turns 21.

The petitioner filed a Form I-360 petition on May 17, 2005, one year after she turned 21 years of age. The CSPA is inapplicable in the instant case. There is no question of "aging out" between the time she filed the Form I-360 petition and the date of adjudication of the Form I-360 petition. The stated purpose of CSPA is to permit an applicant for certain benefits to *retain* classification as a "child" under the Act, even if he or she has reached the age of 21. Here, the petitioner was over age 21 at the time of the filing of the Form I-360 petition; hence, she is statutorily ineligible for the classification. Further, the CSPA does not extend benefits to children of lawful permanent residents. As the petitioner's father was not a United States citizen, the petitioner cannot avail herself of the protection of Section 204(a)(1)(D)(i)(I) of the Act.

We concur with the director's determination that the petitioner failed to establish her eligibility for the status sought. Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

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<sup>2</sup> See U.S. Dept. of Justice, Immigration and Naturalization Service Memorandum from Johnny Williams, Executive Associate Commissioner, Office of Field Operations, dated September 20, 2002. (HQADN706.1.1)

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his/her case.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always in these proceedings, the burden of proof rests solely 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 this decision.