



U.S. Citizenship  
and Immigration  
Services

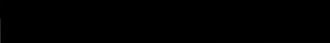
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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 20 2006

EAC 04 114 51525

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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the preference 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 native and citizen of Mexico who seeks 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)(ii), as an alien subjected to battery or extreme cruelty by his lawful permanent resident parent. The director denied the petition because Citizenship and Immigration Services (CIS) records show that the petitioner's father lost lawful permanent resident status over two years before this petition was filed. On appeal, counsel states that the petitioner was a minor when his father was deported and was "without the legal capacity" to understand his immigration status. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish his statutory eligibility and we find that counsel's statements on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 record in this case indicates that the petitioner was born on January 1, 1986 in Mexico and that his father, [REDACTED] was a lawful permanent resident of the United States. However, Citizenship and Immigration Services (CIS) records show that the petitioner's father lost U.S. lawful permanent resident status on November 10, 1998, when he was ordered removed from the United States as an alien convicted of an aggravated felony pursuant to section 237(a)(2)(A)(iii) of the Act. This petition was filed on March 5, 2004, over five years after the petitioner's father lost U.S. lawful permanent residency. Even if the petitioner's father lost his status due to an incident of domestic violence, the petitioner is not statutorily eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act because he filed his petition more than two years after his father's loss of lawful permanent resident status. Based on the present record, the petitioner is not eligible for classification under section 204(a)(1)(B)(iii) of the Act and his petition should be denied.

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which 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.

Accordingly, 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 establish his eligibility.

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 this decision.