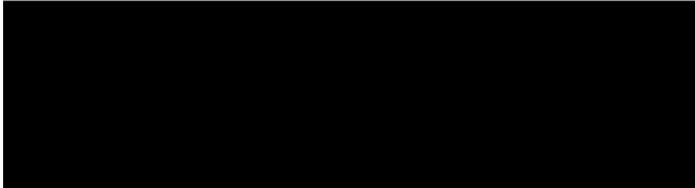


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Pa

FILE: [REDACTED]
EAC 05 066 52535

Office: VERMONT SERVICE CENTER

Date: MAY 04 2006

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Child pursuant to 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The self-petitioner filed a Form I-360 petition 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.

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part, that the child of an alien who is the spouse of a lawful permanent resident of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, may self-petition for immigrant classification if the alien demonstrates to the Secretary of Homeland Security that—

(aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

Section 101(b)(1) of the Act defines the term "child," in part, as "an unmarried person under twenty-one years of age"

The regulation at 8 C.F.R. § 204.2(e)(1)(i) states, in pertinent part, that:

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 a 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;

* * *

(D) Has resided . . . with the citizen or lawful permanent resident parent;

(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; and

* * *

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.

According to the evidence in the record, the self-petitioner's father, [REDACTED] became a lawful permanent resident of the United States on March 7, 1977. The self-petitioner was born in Mexico on November 18, 1983, to [REDACTED] and [REDACTED]. The self-petitioner turned 21 years of age on November 18, 2004. The instant self-petition was filed on January 3, 2005.

In a decision dated August 24, 2005, the director denied the petition, finding that the self-petitioner was ineligible for classification as the battered child of a lawful permanent resident of the United States because she was over the age of 21 at the time of filing her self-petition.

The self-petitioner, through counsel, files a timely appeal, dated September 19, 2005, but does not dispute the findings of the director.

Upon review of the record, we concur with the director's determination regarding the instant self-petition. The petitioner was ineligible for the benefit of this self-petition as she was over the age of 21 at the time of filing. Despite this finding, it appears that the self-petitioner may already have been classified as the battered child of a lawful permanent resident of the United States as she was included on her mother's previously approved Form I-360 as a derivative child.

Under the Child Status Protection Act (CSPA), P.L. 107-278, 116 Stat. 927, which amended section 204(a) of the Act, certain petitioners are eligible to retain classification as a "child" under the Act if they reach the age of 21 after the filing of the petition.¹ Section 204(a)(1)(D)(i)(I)(III) of the Act states:

Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) *that was filed or approved* before the date on which the child attained 21 years of age shall be considered . . . a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.²

The self-petitioner's mother's Form I-360 was filed with the Vermont Service Center on August 27, 2001, when the petitioner was 17 years old. As the self-petitioner was listed as a derivative child on her mother's approved Form I-360 which was filed prior to the self-petitioner's 21st birthday, the self-petitioner retains the same priority date that was assigned to her mother.³ It does not appear that the instant petition ever needed to be filed.

¹ The CSPA took effect on August 6, 2002 and applied to any petition currently pending at that time as well as approved petitions where no final action had been taken on the application for adjustment of status or immigrant visa.

² See also policy memo from Johnny N. Williams, Executive Associate Commissioner, entitled "The Child Status Protection Act," (September 20, 2002) which provides guidance on the continued eligibility of derivative children who reach the age of 21 *after* the filing or approval of the parent's self-petition.

³ The self-petitioner's mother's Form I-360 was approved on November 20, 2001. She subsequently became a lawful permanent resident on January 24, 2005.

While we dismiss the appeal and affirm the director's denial of the instant petition, it would appear that the self-petitioner has already obtained the benefit sought; she has already been approved as the battered child of a lawful permanent resident of the United States based upon her derivative status from her mother's approved Form I-360.⁴

ORDER: The appeal is dismissed.

⁴ To adjust status based upon her derivative status as the battered child of a lawful permanent resident of the United States, the petitioner should file a Form I-485, Application to Adjust Status.