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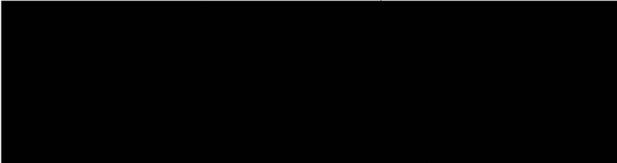
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 22 2006  
EAC 06 061 50035

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Child pursuant to 204(a)(1)(A)(iv) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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 Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification pursuant to section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien battered or subjected to extreme cruelty by her United States citizen parent.

The director denied the petition, finding that the petitioner failed to establish a qualifying relationship as the child of a U.S. citizen.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part:

An alien who is the child of a citizen of the United States, or who was the child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 201(b)(2)(A)(i) of the Act [8 U.S.C. § 1151], and who resides, or has resided in the past, with the citizen parent may file a petition with the [Secretary of Homeland Security] under this subparagraph for classification of the alien (and any child of the alien) under such section 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 citizen parent.

The eligibility requirements for a petition filed under section 204(a)(1)(A)(iv) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part:

(ii) Parent-child relationship to the abuser. 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 . . . . Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

Section 101(b)(1) of the Act defines a "child" as, in pertinent part:

an unmarried person under twenty-one years of age who is –

\* \* \*

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred[.]

The petitioner in this case was born in Trinidad on November 25, 1984 and entered the United States on December 24, 2001. The record shows that when the petitioner was twelve years old, her biological mother

married T-B-<sup>1</sup>, a citizen of the United States. Although the petitioner initially attempted to submit her Form I-360 on October 17, 2005, in a notice dated November 17, 2005, the petitioner was informed that the petition was not accepted for filing due to the lack of an original signature. The petition was resubmitted and stamped as received by the director on December 16, 2005. In the interim, on November 25, 2005, the petitioner turned 21 years of age. As the petitioner was over 21 years of age at the time of filing, the director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship as the child a United States citizen at the time of filing.

The petitioner, through counsel, submits a timely appeal and brief. On appeal, counsel cites to the regulation at 8 C.F.R. § 103.2(a)(2) and argues that as the regulation contains “no specification as to whether a signature has to be original or not” the petition was considered “signed by [the petitioner], timely filed and received” by the director before the petitioner reached 21 years of age. We do not find counsel’s argument to be persuasive. While we agree that the regulation cited by counsel does not explicitly indicate that photocopied signatures are not allowed, the regulation at 8 C.F.R. § 103.2(b)(4) states that application and petition forms “must be submitted in the original.” Counsel does not acknowledge this regulation in her appellate brief or attempt to reconcile her argument with the requirement that *original* forms be submitted. In this instance, the fact that the petitioner’s petition contained a photocopied signature means that the form was a photocopy and thus, not submitted in the original.<sup>2</sup> Accordingly, the director’s rejection of the petitioner’s initial attempt at filing was within her authority as indicated in the regulation at 8 C.F.R. § 103.2(a)(7)(i). The regulation states:

[A]n application or petition received in a Service office shall be stamped to show the time and date of actual receipt and . . . shall be regarded as properly filed when so stamped if it is signed and executed and contains the required filing fee is attached . . . An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions . . . will not retain a filing date.

As the petitioner’s original submission contained a photocopied signature and was, therefore, not properly signed, the submission was rejected and did not retain a filing date. By the time the petition was resubmitted with an original signature on December 15, 2005, the petitioner had already reached the age of 21. While unfortunate, the circumstances surrounding the filing of the petition cannot be attributed to an error on the part of the director.

In the alternative, counsel argues that despite the petitioner’s attainment of the age of 21, she remains eligible for approval up to the age of 25 under section 805(c) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”).<sup>3</sup> Again, however, we do not find counsel’s argument to be persuasive. While VAWA 2005 permits sons and daughters of abusive U.S. citizens to file a self-petition until they are 25 years of age if they were eligible to file such a petition when they were under 21 years old and they show that the abuse was at least one central reason for the filing delay, the law came into effect *after* the filing of

<sup>1</sup> Name withheld to protect individual’s identity.

<sup>2</sup> See the Citizenship and Immigration Services (CIS) website at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9453d59ae8a8e010VgnVCM1000000ecd190aRCRD&vgnnextchannel=de529c7755cb9010VgnVCM10000045f3d6a1>, which confirms the necessity of an *original* signature, accessed on November 20, 2006.

<sup>3</sup> See Pub. L. No. 109-162, § 805(c), (Jan. 5, 2006), 119 Stat 2960.

the petition. The statutory provision does not indicate that it applies retroactively to petitions that were pending at the time the law was enacted.<sup>4</sup>

Notwithstanding our support of the director's findings however, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID). The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that Citizenship and Immigration Services (CIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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 the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

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<sup>4</sup> While not applicable to the instant Form I-360, the statutory provision would be appear to be applicable to any future petition filed by the petitioner before she turns 25 years of age.