

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

CL



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 03 2005
EAC 03 013 51584

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien as a Special Immigrant Pursuant to Section 101(A)(27)(D) of
the Immigration and Nationality Act, 8 U.S.C. § 1101(A)(27)(D)

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an individual who currently resides in the United States, but seeks special immigrant status based upon his previous employment with the United States military as a civilian working in the Directorate of Engineering and Housing (DEH), in Corozal, Panama. He filed a Petition for Amerasian, Widow, or Special Immigrant (Form I-360) on or about September 3, 2002. The petition was accompanied by numerous supporting documents, which included: 1) a letter dated January 5, 1999, addressed to the petitioner from [REDACTED] Director of Civilian Personnel, Department of the Army, Headquarters, Theater Support Brigade, Fort Clayton, Panama, which notified the petitioner that due to the implementation of the Panama Canal Treaties, his position was being abolished or relocated outside Panama, effective September 30, 1999; 2) a Certificate of Appreciation from the Headquarters, U.S. Army Garrison in Panama, dated April 17, 1995, awarded to the petitioner "for Outstanding Contribution to Operation Safe Haven"; 3) a Letter of Recommendation for [REDACTED] Service Order Clerk, dated July 21, 1999, submitted by [REDACTED] Chief, Management Branch in support of the petitioner's application for special immigrant status; 4) a Letter of Commendation, undated, from [REDACTED] Supervisory Service Order Clerk, commending him for a job well done during a facility power outage on August 5, 1998; 5) a Notice of Action dated August 1, 1996, requesting a temporary promotion for the petitioner; and 6) several additional documents reflecting commendations, awards, certificates of training, and favorable evaluations of the petitioner's performance while assigned to the U.S. Army Garrison in Panama. The entire record was reviewed and considered in rendering a decision on the appeal.

The director determined that the petitioner had not established that he had satisfied the requirements of section 101(a)(27)(D) of the Immigration and Nationality Act (the Act), necessary for special immigrant status, and denied the petition in a decision dated September 22, 2003.

The petitioner has submitted a statement in support of the appeal, and while acknowledging that the petition had not satisfied all of the necessary requirements under the statute, asks for favorable treatment of his petition, noting that "there are exceptions to the rules." See *Statement of the Petitioner in Support of the Appeal*, dated October 22, 2003.¹

Section 101(a)(27)(D) of the Act, 8 U.S.C. § 1101(a)(27)(D), provides for the granting of special immigrant status to an individual who:

[is] an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children;

¹ The record contains a Notice of Entry of Appearance (Form G-28), submitted by counsel. However, it appears that the petitioner's submission on appeal was prepared without the assistance of counsel as it is entirely in the petitioner's handwriting and is unaccompanied by any brief or supporting statement from counsel. Because there is no indication from the record that counsel has sought to withdraw from representing the petitioner, the AAO still considers him to be represented by counsel for immigration purposes.

Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

A review of the record establishes that the applicant was employed for a period of eleven (11) years and ten (10) months by the U.S. Army Directorate of Engineering and Housing (DEH), Resources Division/Management Branch/Service, a unit of the United States Department of Defense operating in Panama. See *Letter from Lieutenant Colonel, Patrick L. Staffieri*, undated. The AAO notes that in the petitioner's statement on appeal, he asserts that he was, in fact, employed for a period of twelve (12) years and six (6) months and not the time specified in the director's decision. However, the director reached his conclusion on the basis of documents submitted by the petitioner himself.² Nevertheless, we note that even if we were to accept the applicant's statement of his length of service, it still falls short of the statutory requirement that he have served for a period of at least fifteen (15) years.

Although the petitioner lacks the requisite amount of service to the United States government abroad, this decision will briefly address the additional grounds required for eligibility for special immigrant status, and will review the evidence contained in the record on these issues. In addition to the length of service, the second and third issues relate to the endorsement of the petition by entities of the United States Government. For the applicant to qualify for special immigrant status, he must demonstrate that: 1) the principal officer of a Foreign Service establishment has recommended the granting of special immigrant status in exceptional circumstances; and 2) the Secretary of State approves such recommendation and finds that granting the status is in the national interest.

On the first issue, regarding a recommendation from the principal officer of a Foreign Service establishment, the petitioner's evidence appears to be the letter of the previously identified Lieutenant Colonel, who is the Director of Engineering and Housing for the Department of the Army, at Fort Clayton, Panama. The record also contains the letter of recommendation from [REDACTED] identified as the Chief, Management Branch, RD. While both individuals recommend that the petitioner be afforded special immigrant status, neither document is from "the principal officer of a Foreign Service establishment" as that phrase would commonly be understood. The remaining requirement is that the "Secretary of State approves such recommendation and finds that it is in the national interest to grant such status." The record contains no document which makes the necessary findings, from either the Secretary of State, or any official identified as being associated with the U.S. Department of State. Consequently, the evidence on these critical requirements does not conform to the statutory requirements on their face, or, as the following discussion reflects, as interpreted by the Board of Immigration Appeals (BIA).

² It would appear that had the applicant remained in his position until he was scheduled to be separated from service on September 30, 1999, he would have accrued the amount of service he claims. The amount of service, however, could have been shorter if he voluntarily left service prior to the scheduled separation date. Because the only documentation specifically addressing his length of service specifies the shorter tenure, the AAO will not disturb the director's findings on this issue.

Matter of Lieu, 15 I&N Dec. 786 (BIA 1976) is a precedent decision addressing the issue of eligibility for special immigrant status pursuant to section 101(a)(27)(D). In that case, the United States Embassy in Saigon had employed the petitioner for a period of nineteen (19) years. Evidence in the record reflected that her service had been deemed outstanding by the Senior Personnel Officer at the Embassy. The applicant's employment was involuntarily terminated due to the fall of the Republic of Vietnam. It was held that in the absence of a recommendation from the "Chief Officer of the United States Embassy in Saigon," a position which no longer existed, due to political events, the BIA found that an acceptable alternative would be the recommendation of the coordinator of Ombudsman, Former Employees of Indochina Missions. Furthermore, evidence in the record, reflected that the Department of State had concurred in the recommendation to grant the petitioner special immigrant status.³ The BIA case reinforces the statute's requirement that high level recommendations and concurrences be provided in order for a petitioner to be eligible for the benefit sought.

Examining the evidence in the instant case, the petitioner, in addition to lacking the required time in service, also lacks the necessary recommendations and concurrences. *Matter of Lieu* recognizes that the recommendation itself must be from the highest level, Foreign Service officer abroad, i.e., the head of the embassy, presumably the ambassador, or consul. Because the embassy had closed after the fall of Saigon, the BIA allowed the petitioner in that case to present a recommendation from an individual who was not the head of the Foreign Service establishment; in that case, another high ranking official of the Department of State. In the instant case, there is no recommendation from the United States embassy in Panama. Even if we were to assume, that in the case of service at an overseas military establishment, the necessary recommendation need not come from the head of the embassy but, rather, from the military, the evidence is still deficient. The recommendations here, while coming from individuals who, have achieved distinguished ranks within the military, cannot be said to have come from the principal officer of the U.S. military in Panama, but rather are from officials who head the sub-units within which the petitioner was employed.

The purpose of the requirement that the recommendations come from very high level officials, appears designed to ensure that the individuals eligible to obtain special immigrant status are persons whose service to the United States government abroad is not only very satisfactory, as the petitioner's appears to be, but rise to the level of exceptional circumstances such that it is in the national interest that the alien be afforded status as a special immigrant. While we conclude that the applicant performed very capably and honorably for the United States in Panama, the absence of the necessary recommendations and concurrences indicate that his service, while honorable, did not rise to the necessary level for the conferral of special immigrant status.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S. C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

³ The decision reflected that the Chief, Advisory Opinions Division, Bureau of Security and Consular Affairs, had provided a statement pursuant to the authority delegated to that office by the Secretary of State.