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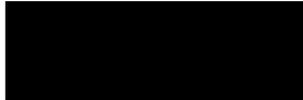


Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:

Beneficiary:



PETITION: Petition for Special Immigrant Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(I) of the Act, 8 U.S.C. § 1101(a)(27)(I)

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 Director, California Service Center, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The beneficiary is a native and citizen of the Philippines. He was employed as a civilian by the United States Navy in the Philippines for approximately eight years. The applicant was further employed by the government of Palau for approximately 13 years. The applicant seeks classification as a special immigrant pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as it refers to section 101(a)(27)(D) of the Act.

The director denied the application, finding that the applicant failed to show that he was employed by the United States government for at least 15 years, as required by section 101(a)(27)(D) of the Act. *Decision of the Director*, dated January 11, 2007.

On appeal, the applicant explains that the United States closed the military base for which he worked in the Philippines, thus he was prevented from accruing at least 15 years of employment there due to circumstances beyond his control. *Statement from Applicant on Appeal*, dated February 7, 2007. The applicant explains that he attempted to find other ways to serve the U.S. government in lieu of direct employment. *Id.* The applicant notes that he has numerous relatives in the United States, including his elderly father and five siblings, and that he requests that U.S. Citizenship and Immigration Services (CIS) waive the requirements for special immigrant status in order that he may reside with them in the United States. *Id.*

The record contains a statement from the applicant; copies of the applicant's Form I-94, Departure Record, and passport; documentation reflecting that the applicant's father is elderly and has health problems; documentation verifying that the applicant worked for the United States Navy for approximately eight years; documentation verifying that the applicant worked for the Bureau of Public Works for the government of Palau; copies of certificates of achievement and training the applicant received in connection with his employment; a copy of the applicant's birth certificate; and a copy of the applicant's baptismal certificate. The entire record was considered in rendering this decision.

Section 203(b)(4) of the Act states, in pertinent part, that "[v]isas shall be made available . . . to qualified special immigrants described in section 101(a)(27) . . ." Among the individuals who fall within this class of special immigrants are those described in section 101(a)(27)(D) of the Act as follows:

[A]n 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: *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.

Thus, the applicant must show that he was an employee of the United States government abroad for a total of at least 15 years. Section 101(a)(27)(D) of the Act. However, upon review, the applicant has only established

that he worked for the United States government for seven years, 11 months, and 10 days. *Notification of Personnel Action from U.S. Department of the Navy*, dated May 22, 1992. The applicant provides documentation of his employment with the government of Palau. However, as Palau is an independent country with its own government, separate from the United States, the applicant has not shown that work for the government of Palau constitutes work for the government of the United States. As the applicant has not shown that he worked for the U.S government abroad for at least 15 years, he has not shown that he meets the definition of special immigrant found at section 101(a)(27)(D) of the Act. For this reason, the petition may not be approved.

The director discussed the requirements for a "national interest waiver" pursuant to section 203(b)(2)(B) of the Act. However, section 203(b)(2)(B) of the Act addresses the possible waiver of a job offer requirement for an individual applying for permanent residence based on his potential employment in the United States. In the present matter, the applicant has applied for status as a special immigrant pursuant to section 203(b)(4) of the Act, and the definition found at section 101(a)(27)(D) of the Act. *Form I-360, Part 2*, filed September 27, 2006. The applicant has not applied for status based on his prospective employment in the United States. Therefore, the requirements for a national interest waiver pursuant to section 203(b)(2)(B) of the Act are not relevant to the present proceeding, and the director's comments in this regard will be withdrawn. The Act and regulations do not afford CIS the discretion to waive the elements of the definition of special immigrant found at section 101(a)(27)(D) of the Act.

It is further noted that the record contains no indication that "the principal officer of a Foreign Service establishment . . . in his discretion, [has] recommended the granting of special immigrant status to [the applicant] in exceptional circumstances." Section 101(a)(27)(D) of the Act. While the applicant has provided documentation of his awards and training in the course of his employment with the U.S. Navy, he has not shown that an official of the U.S. Navy or other principal officer of a Foreign Service establishment has recommended that the present petition be granted, and that exceptional circumstances are presented. *Id.* The regulation at 22 C.F.R § 42.32(d)(2) provides that the applicant must first obtain endorsement of his special immigrant status under section 101(a)(27)(D) of the Act from the U.S. Secretary of State. 22 C.F.R § 42.32(d)(2). However, the record does not contain notification from the Secretary of State that the Department of State has reviewed and approved the recommendation of the principal officer of a Foreign Service establishment to afford the applicant special immigrant status. *Id.* For these additional reasons, the petition may not be approved.

Based on the foregoing, the petitioner has failed to show that he meets the requirements for special immigrant status pursuant to section 203(b)(4) of the Act, as it refers to section 101(a)(27)(D) of the Act.

In visa petition proceedings, the burden of proof is on the petitioner to establish eligibility for the benefit sought by a preponderance of the evidence. *Matter of Brantigan*, 11 I&N Dec. 151 (BIA 1965). The issue "is not one of discretion but of eligibility." *Matter of Polidoro*, 12 I&N Dec. 353 (BIA 1967). In this case, the petitioner has not shown eligibility for the benefit sought.

ORDER: The appeal is dismissed.