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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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BA

FILE: [Redacted]
EAC 04 049 50478

Office: VERMONT SERVICE CENTER

Date: MAY 17 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [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:

SELF-REPRESENTED

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 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 petitioner is a 24-year old native of Mexico who is 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. In a decision dated December 20, 2004, the director denied the petition, finding that the petitioner was ineligible for classification as the battered child of a permanent resident of the United States because she was over the age of 21 at the time of filing.

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

Further, the regulation at 8 C.F.R. § 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 petitioner's mother wed her lawful permanent resident spouse on November 7, 1980 in Matamoros, Mexico. The petitioner was born on January 30, 1981. The petitioner filed the instant petition on December 6, 2003. At the time of filing the petition, the petitioner was over 21 years of age.

On appeal, the petitioner submits a statement with no additional evidence. The states the following as her reason for the appeal:

What I didn't know was that my case would take so long (more than 10 years) and my application would expire when I turned 21 years old. I applied in February '93 and in June '98, I got a letter from the Immigration Office in Harlingen asking for fingerprints and urine samples for my resident card. Ever since then I have received my work permit which I've been renewing for 5 years. Now at age 23 all I have is my desire to reside here in the U.S. to be with my family, and an opportunity to work like I have been doing.

The statements made by the petitioner on appeal do not overcome her statutory and regulatory ineligibility. As the petitioner was over the age of 21 years of age at the time of filing, her petition is ineligible for approval.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.