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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 17 2008

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 applicant is a native and citizen of Benin. The record reflects that the applicant has been admitted to the United States in A-1 and G-1 status. The applicant first obtained G-4 status on November 22, 2005, when his status was changed from G-1 to G-4. He 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).

The director denied the application, finding that the applicant failed to show that he has resided and been physically present in the United States for a period totaling at least seven years between the ages of five and 21 years while maintaining G-4 status pursuant to section 101(a)(15)(G)(iv) of the Act, as required by section 101(a)(27)(I)(i) of the Act. *Decision of the Director*, dated December 3, 2007.

On appeal, counsel for the applicant asserts that the applicant's time in G-1 status constitutes maintaining status in the United States pursuant to section (15)(G)(iv) of the Act, and he is statutorily eligible for classification pursuant to section 203(b)(4) of the Act. *Statement from Counsel on Form I-290B*, dated January 2, 2008. Counsel contends section 101(a)(27)(I)(i) of the Act defines such aliens to include representatives and member of their immediate families who enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act (59 stat. 667) 22 U.S.C. 288, and thus includes individuals in G-1 status. *Id.*

The record contains a statement from counsel; copies of the applicant's passport, Form I-94, and U.S. visas; a letter from the United States Mission to the United Nations confirming that the applicant and his family members were admitted to the United States pursuant to G-1 visas, dated May 8, 2006, and; documentation of the applicant's educational activities in the United States. 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) of this title . . . ." Among the individuals who fall within this class of special immigrants are those described in section 101(a)(27)(I)(i) as follows:

> [A]n immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who
>
> (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and

(II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later

The decision of the director states that the applicant did not obtain G-4 status until November 22, 2003, and did not therefore accrue seven years of presence in G-4 status before filing his application for adjustment of status on March 12, 2007. *Decision of the Director* at 2. The AAO notes that records indicate the applicant obtained G-4 status on November 22, 2005, not 2003 as stated by the director, and therefore accrued under two years of presence in G-4 status before filing his application. The AAO further notes that the applicant will reach the age of 22 on April 29, 2009, less than four years after he obtained G-4 status in November 2005, and will thus be unable to accrue seven years of presence in the United States between the ages of five and 21 while maintaining G-4 status.

Prior to obtaining G-4 status, the applicant accrued presence in the United States in G-1 status. The issue in the present proceeding is whether time in G-1 status constitutes "maintaining the status of a nonimmigrant under paragraph (15)(G)(iv)," as required by section 101(a)(27)(I)(i) of the Act. Section 101(a)(27)(I)(i) of the Act.

Section 101(a)(15)(G) of the Act contains five subsections that provide definitions of categories of individuals who may be afforded G status, as follows:

(i) a designated principal resident representative of a foreign government recognized *de jure* by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except that for the fact that the government of which such alien is an accredited representative is not recognized *de jure* by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees

Congruent with the five subsections of section 101(a)(15)(G) of the Act, the U.S. Department of State issues G visas in the categories of G-1, G-2, G-3, G-4, and G-5. 9 FAM 41.24 N.1. The United States Department of State Foreign Affairs Manual (FAM), volume 9, section 41.24, Note 1, states the following:

> A qualified person may be issued a "G" visa in one of the categories listed below:
>
> (1) G-1 visas—Issued to members of a permanent mission of a recognized government to an international organization, regardless of rank, and to members of their immediate families. G-1 visas are also issued to the mission's secretaries, chauffeurs and custodial employees, except domestic employees, who are issued G-5 visas.
>
> (2) G-2 visas—Issued to representatives of a recognized government and to members of their immediate families traveling to the United States temporarily to attend meetings of a designated international organization. G-2 officials may represent their governments at the United Nations General Assembly or as TDY officers to that country's mission to the international organization. G-2 visas may be issued to military officers who are assisting the United Nations Secretariat with peacekeeping matters. Family members may also be issued G-2 visas.
>
> (3) G-3 visas—Issued to representatives of non-recognized or nonmember governments, regardless of rank, and to members of their immediate families. G-3 visas should also be issued to representatives of such governments so as to participate in temporary meetings of designated international organizations (e.g., a meeting of the United Nations General Assembly and Security Council).
>
> (4) G-4 visas—Issued to personnel of any rank who are proceeding to the United States to take up an appointment at a designated international organization (including the United Nations). Members of their immediate families may also be issued G-4 visas, except U.S. Department of State Foreign Affairs Manual Volume 9 – Visas 9 FAM 41.24 Notes Page 2 of 12 their domestic employees, who are issued G-5 visas.
>
> Officers and employees of designated international organizations, who are not assigned in the United States, may be accorded G-4 classification if they intend to transit the United States. The number of entries should be limited to the official request. (See 9 FAM 41.24 N10.)
>
> G-4 visas may also be issued to personnel of any rank on the payroll of a designated international organization proceeding to the United States on behalf of that organization.
>
> (5) G-5 visas—Issued to the attendants and personal employees of persons in G-1 through G-4 status.

9 FAM 41.24 N.1. In examining section 101(a)(15)(G)(i) of the Act and volume 9, section 41.24 N.1 of the FAM, it is evident that the State Department issues one of five G visas depending on the provision of section 101(a)(15)(G) of the Act under which the applicant qualifies for G status. For example, when an applicant meets the definition under section 101(a)(15)(G)(i) of the Act, the Department of State issues a G-1 visa. 9 FAM 41.24 N.1(1); section 101(a)(15)(G)(i) of the Act. When an applicant meets the definition under section 101(a)(15)(G)(iv) of the Act, the Department of State issues a G-4 visa, and so forth. 9 FAM 41.24 N.1; section 101(a)(15)(G) of the Act.

In the present matter, the applicant and his family members were afforded G-1 status based on his father's employment as a diplomatic member of the Permanent Mission of Benin. *Letter from the United States Mission to the United Nations*, dated May 8, 2006. The fact that the applicant was afforded a G-1 visa by the Department of State and G-1 status upon entry reflects that he was deemed eligible for G status under section 101(a)(15)(G)(i) of the Act. Thus, the time that the applicant spent in the United States in G-1 status constituted presence while maintaining the status of a nonimmigrant under section 101(a)(15)(G)(i) of the Act, not section 101(a)(15)(G)(iv) of the Act.

Section 101(a)(27)(I)(i) of the Act specifically states that an applicant must meet the residency requirements "while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv)." Section 101(a)(27)(I)(i) of the Act. The applicant accrued less than two years of presence in the United States while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) before filing his application for adjustment of status. Thus, he has not established that he has resided and been physically present in the United States for a period totaling at least seven years between the ages of five and 21 years while maintaining G-4 status pursuant to section (15)(G)(iv) of the Act, as required by section 101(a)(27)(I)(i) of the Act. For this reason, the petition may not be approved.

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.