U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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C5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 11 2007

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 sustained.

The beneficiary is a native and citizen of the Dominican Republic who has resided in the United States since November 21, 1996 as the G-4 son of an officer or employee of Intelsat, an international organization described in section 101(15)(G)(i) of the Act. 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, as required by section 101(a)(27)(I)(i) of the Act. *Decision of the Director*, dated December 16, 2005.

On appeal, counsel for the applicant asserts that the director erroneously interpreted the residency requirement of section 101(a)(27)(I)(i) of the Act. *Brief from Counsel*, dated January 3, 2006. Counsel contends that the applicant has established that he meets all of the requirements of section 101(a)(27)(I)(i) of the Act, and the application should be approved. *Id.*

The record contains a brief from counsel; a letter confirming the applicant's mother's employment with Intelsat; records of the applicant's school attendance in the United States; a summary of the applicant's absences from the United States; copies of the applicant's Form I-94, passport, and G-4 visas; a copy of the applicant's birth certificate, and; records relating to the applicant's conviction for driving under the influence of alcohol. 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
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> (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
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> (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

At issue in the present proceeding is the period of time in which an applicant must meet the residency requirment of section 101(a)(27)(I)(i)(I) of the Act. Section 101(a)(27)(I)(i)(I) of the Act provides that an applicant must have resided and been physically present in the United States "for a period or periods aggregating at least seven years between the ages of five and 21 years." The director interpreted this phrase to mean that an applicant must establish that he accrued the required residency after age five and before his 21st birthday. *Decision of the Director* at 1. However, counsel contends that an applicant may meet this requirement between the date that he reaches age five and the date before he reaches age 22, effectively allowing an applicant time to meet the requirement throughout the year that he is age 21. *Brief from Counsel* at 1-3. Counsel notes that the Act is clear in other sections where Congress intended to specify that a deadline occurs on an applicant's birthday. *Id.* at 3(citing the definition of "child" found in section 101(b)(1) of the Act as one who is "under twenty-one years of age.")

The difference in interpretation is material in the present proceeding, as the applicant had not accrued seven years of residence and physical presence in the United States as of December 4, 2002, his 21st birthday. Yet, he reached seven years of residence on November 20, 2003, during the one-year period that he was age 21. Therefore, if the director's interpretation is followed, the applicant has not shown that he meets section 101(a)(27)(I)(i)(I) of the Act and he is not eligible for special immigrant status. However, if counsel's interpretation is followed, the applicant meets section 101(a)(27)(I)(i)(I) of the Act.

Upon review, the AAO finds that an applicant's residence and presence in the United States between the date that he reaches age five and the day before he reaches age 22 may be considered in assessing whether he meets the residency requirement of section 101(a)(27)(I)(i)(I) of the Act. In drafting the Act, Congress did not clearly indicate whether they intended section 101(a)(27)(I)(i)(I) to require an applicant to meet the residency requirement by his 21st birthday. In the absence of a such clarification, the AAO will look to other sections of the Act and the colloquial use of the phrase "age 21."

As observed by counsel, section 101(a)(27)(I)(i)(II) of the Act imposes a deadline for the present application of "no later than [the applicant's] twenty-fifth birthday or six months after October 24, 1988, whichever is later." In drafting this section, Congress clearly indicated that the applicant's eligibility to properly file an application under this section would end the day after his 25th birthday. Conversely, in section 101(a)(27)(I)(i)(I), the paragraph that immediately precedes section 101(a)(27)(I)(i)(II), Congress used the phrase "between the ages of five and 21 years." The fact that Congress specifically referenced an applicant's birthdate as a deadline in section 101(a)(27)(I)(i)(II) of the Act but not in section 101(a)(27)(I)(i)(I) lends weight to the conclusion that Congress did not intend for the phrase "between the ages of five and 21 years" to mean between the ages of five and an applicant's 21st birthday.

Other sections of the Act contain language that clearly states an individual's birthday as integral to a definition or deadline. For example, section 101(b)(1) defines the term "child" as "an unmarried person under twenty-one years of age . . . ." Thus, Congress designated an individual's 21st birthday as the date that he no longer meets the definition of child under section 101(b)(1) of the Act. It follows that Congress was aware of the possibility of structuring section 101(a)(27)(I)(i)(I) to clearly require the residency requirement to be met by an applicant's 21st birthday, yet declined to do so.

Technically, it can be stated that an individual has lived for a total of 21 years when he reaches his 21st birthday. However, in common usage, he may properly state that he is 21-years-old during the following 364 days, when he has in fact lived for more than 21 years. In Black's Law Dictionary (8th ed. 2004), the entry for the term "age" states that "[i]n American usage, age is stated in full years completed (so that someone *15 years of age* might actually be 15 years and several months old)." Thus, the phrase "between the ages of five and 21 years" can be reasonably understood as including the period of time that an applicant continues to be "21 years of age," or until his 22nd birthday.

Based on the foregoing, the AAO will consider whether the applicant met the residency requirement of section 101(a)(27)(I)(i)(I) between the date that he reached five years of age, and the date that he ceased to be age 21, or his 22nd birthday on December 4, 2003.

As noted above, the applicant has resided in the United States in G-4 status since November 21, 1996. Accordingly, he had resided and been physically present in the United States for a period totaling seven years as of November 20, 2003. As he did not reach his 22nd birthday until December 4, 2003, he has established that he met the residencey requirement of section 101(a)(27)(I)(i)(I) of the Act.

After careful consideration of the record, the AAO finds that the applicant meets the remaining requirements for special immigrant status found in section 101(a)(27)(I)(i) of the Act. Therefore, the appeal will be sustained and the application will 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 shown eligibility for the benefit sought.

ORDER: The appeal is sustained.