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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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File: [REDACTED] Office: TEXAS SERVICE CENTER Date: **SEP 08 2009**

IN RE: Applicant: [REDACTED]

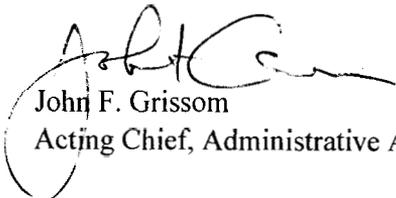
Petition: Application to Adjust Status Pursuant to Section 209(b) of the Immigration and Nationality Act, 8 U.S.C. § 1159(b)

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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the application for adjustment of status (Form I-485) and certified his decision to the Administrative Appeals Office (AAO). The district director's decision will be affirmed. The application will be denied.

The applicant is a native of Azerbaijan and a citizen of Russia who filed this application for adjustment of status to that of a lawful permanent resident under section 209(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1159(b) as an asylee.

A review of the record reveals the following facts and procedural history. The applicant was born on July 23, 1981. He last entered the United States on December 21, 1993. His mother filed for asylum on September 15, 1994 and included the applicant on her Form I-589, Request for Asylum in the United States, as her child. The applicant was granted derivative asylee status through the approval of his mother's asylum application on August 23, 2001. The applicant turned 21 on July 23, 2002. The applicant filed the Form I-485 on February 12, 2007.

The director denied the applicant's Form I-485 because the applicant was over 21 and his eligibility was not preserved under the Child Status Protection Act (CSPA), Pub. L. No. 107-208 (Aug. 6, 2002). The applicant filed a motion to reopen and reconsider the director's decision. The director dismissed the applicant's motion as untimely, but reopened the matter *sua sponte* in order to certify the matter to the AAO. The matter was certified to the AAO on June 26, 2009. On July 23, 2009, the applicant submitted a letter asserting that he qualified for adjustment of status based on a revised United States Citizenship and Immigration Services (USCIS) interpretation of the CSPA. The revised guidance cited by the applicant is not applicable to his case and the director's decision will be affirmed.

The Act defines a "child" as, in pertinent part, "an unmarried person under twenty-one years of age." Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). An alien who derived asylee status through his or her parent is eligible for adjustment of status to lawful permanent residency only if he or she continues to be the child of a refugee. Section 209(b)(3) of the Act, 8 U.S.C. § 1159(b)(3). In this case, the applicant was a child at the time he was granted derivative asylee status. At the time he filed his Form I-485, however, the applicant was 24 years old and no longer eligible for adjustment as the child of a refugee.

The relevant "age-out" protections of the CSPA do not apply to the petitioner. The CSPA mandated the continued classification of an alien as a child derivative asylee if the alien was a child on the date his or her parent applied for asylum, but turned 21 years old before the asylum application was approved. Section 208(b)(3)(B) of the Act, 8 U.S.C. § 1158(b)(3)(B). In this case, the applicant remained a child while his mother's application

for asylum was pending and when it was granted. Hence, the CSPA “age-out” protection pertaining to derivative asylees was irrelevant to the applicant’s case.¹

In his letter, the applicant asserts that he is eligible for adjustment of status based on a revised USCIS interpretation of the CSPA announced on May 6, 2008. However, the guidance cited by the applicant only applies to applicants for immigrant status under section 204 of the Act, not derivative asylees under section 208 of the Act. *See Revised Guidance for the Child Status Protection Act (CSPA)*, USCIS Domestic Operations (May 6, 2008). The CSPA contains no provision that enables the petitioner to adjust his status under section 209(b)(3) of the Act as the child of a refugee despite the fact that he was 24 years old at the time he filed his adjustment application.

The applicant bears the burden of proof to establish his eligibility for adjustment of status. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met his burden. Accordingly, the AAO affirms the director’s denial of the Application for Adjustment of Status.

ORDER: The director’s decision is affirmed. The application is denied.

¹ In addition, the CSPA is not retroactive and was enacted on August 6, 2002, after the asylum application of the applicant’s mother was adjudicated and after the applicant turned 21. CSPA § 8, Pub. L. No. 107-208 (Aug. 6, 2002).