



U.S. Citizenship  
and Immigration  
Services

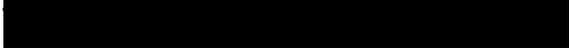
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



B9

FILE:  Office: VERMONT SERVICE CENTER Date: JUL 13 2005

IN RE: Petitioner:   
Beneficiary: 

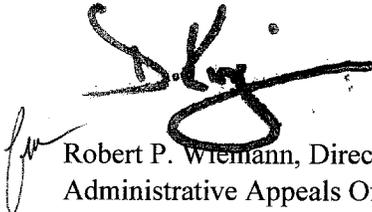
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a lawful permanent resident of the United States. In a decision dated September 29, 2004, the director denied the petition, finding that the petitioner was ineligible for classification because she was over 21 years of age 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 was born in Mexico on October 12, 1978 to [REDACTED] and [REDACTED]. The petitioner's father filed a Form I-130 petition on the petitioner's behalf.<sup>1</sup> The instant self-petition was filed on October 1, 2003. At the time of filing the petition, the petitioner was over 21 years of age.<sup>2</sup>

On appeal, counsel for the petitioner states that because the abuse took place prior to the petitioner's 21<sup>st</sup> birthday, and because the petitioner's father had filed a separate petition on behalf of the petitioner prior to her 21<sup>st</sup> birthday, the fact that the instant petition was filed after the petitioner's 21<sup>st</sup> birthday, is "irrelevant."

Counsel makes several arguments to support her statement. First, counsel refers to the Child Status Protective Act (CSPA) and states that "a child remains eligible for adjustment if the petition is filed before the age of 21, even if the child turns 21 before it is adjudicated." We are not persuaded by counsel's argument. The CSPA was intended to protect children who, due to delays in processing of their or their parents' visas, reach their majority before they receive their permanent residence. Counsel's argument fails in this instance because the Form I-130 petition was not denied because the petitioner was over 21 years of age, but rather because the petitioner's father lost his permanent resident status. The petitioner's age was irrelevant in the determination as she was ineligible based upon the fact that she did not have a qualifying relationship.

As it relates to the instant petition, the CSPA clearly does not apply, as the petition was *not* filed prior to the petitioner's 21<sup>st</sup> birthday. Had the petitioner filed the instant petition *prior* to her 21<sup>st</sup> birthday, she would have been protected under the CSPA and would not be considered to have "aged-out."

<sup>1</sup> The petition and the accompanying Form I-485 were denied on June 15, 2004 based upon the fact that the petitioner's father's permanent resident status was terminated.

<sup>2</sup> The petition was filed 11 days prior to the petitioner's 27<sup>th</sup> birthday.

Counsel then refers to 8 C.F.R. § 204.2(h) and argues, “the Act allows . . . for battered spouses and children, the transfer of the priority dates from petitions filed by their abusers to their new self-petitions ‘without regard to the current validity’ of the previous petition.”

The regulation at 8 C.F.R. § 204.2(h) states:

*Validity of Approved Petitions – (1) General.* Unless terminated pursuant to section 203(g) of the Act or revoked pursuant to part 205 of this chapter, the **approval** of a petition to classify an alien as a preference immigrant under paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of section 203 of the Act, or as an immediate relative under section 201(b) of the Act, shall remain valid for the duration of the relationship to the petitioner and of the petitioner’s status as established in the petition.

[Emphasis added.]

While we do not dispute the fact that the Form I-130 was filed prior to the petitioner’s 21<sup>st</sup> birthday, counsel’s argument fails because the regulation pertains only to *approved* petitions. In this instance, the Form I-130 filed in the petitioner’s behalf was never approved.

Moreover, even if we were persuaded by counsel’s appellate arguments, we find an issue beyond the decision of the director that precludes approval of the instant petition. The regulation at 8 C.F.R. §§ 204.2(e)(1)(i)(A) and (B) require the petitioner to establish that she is the child of a citizen or lawful permanent resident of the United States and that she is eligible based upon that relationship.

Section 204(a)(1)(B)(v)(I) of the Act states:

For the purposes of any petition filed or approved under clause (ii) or (iii), divorce, or the loss of lawful permanent resident status by a spouse or parent *after* the filing of the petition under that clause shall not adversely affect approval of the petition, and for an approved petition, shall not affect the alien’s ability to adjust status . . . .

[Emphasis added.]

Further, the regulation at 8 C.F.R. § 204.2(e)(1)(iii) states, in pertinent part:

*Citizenship or immigration status of the abuser.* The abusive parent must be a citizen of the United States or a lawful permanent resident of the United States *when the petition is filed and when it is approved*. Changes in the abuser’s citizenship or lawful permanent resident status *after* the approval will have no effect on the self-petition . . . .

[Emphasis added.]

The record reflects that the petitioner's father's permanent resident status was terminated on July 28, 2000, and he was subsequently deported from the United States. The instant petition was filed more than three years after the termination of the petitioner's father's status. As cited above, while the loss of status has no effect on a petition once the petition has been filed or approved, there is no similar provision which allows an alien to file self-petition and establish eligibility despite the termination of the petitioner's parent's lawful immigrant status. The fact that the petitioner's father's termination of status and subsequent deportation was due to his abusive nature has no relevance in our determination. We are bound by the clear language of the statute and do not have any authority to waive the requirement that in order to establish her eligibility, the petitioner must be the child of a lawful permanent resident of the United States or a United States citizen at the time of filing. For this additional reason, the petition may not be approved.

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.

**ORDER:** The appeal is dismissed.