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**U.S. Citizenship
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Services**

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FILE: LIN 04 241 50891 Office: NEBRASKA SERVICE CENTER Date: **MAY 30 2006**

IN RE: Petitioner: 

PETITION: Petition for Special Immigrant Unmarried Son or Daughter of an International Organization Employee Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(4)

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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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), as the daughter of an officer or employee, or of a former officer or employee, of an international organization. The director denied the petition on June 23, 2005, finding that the petitioner she did not maintain nonimmigrant status under paragraph (15)(G)(iv) or paragraph (15)(N) of section 101 of the Act for the requisite amount of time prior to filing and that neither the statute nor the regulation contemplate approval of a special immigrant petition for the daughter of a foreign diplomat or consular official. On July 25, 2005, the petitioner filed a timely appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrants as described in section 101(a)(27)(I) of the Act, 8 U.S.C. § 1101(a)(27)(I), which pertains to an immigrant who:

(i) . . . 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 the date of enactment of the Immigration Technical Corrections Act of 1988, whichever is later

[Emphasis added.]

Section 101(a)(15)(G)(i) of the Act describes the term international organization as one that falls under the International Organizations Immunities Act (59 Stat. 669), 22 U.S.C. § 288.

As it relates to the term international organization, 22 U.S.C. § 288 states:

For the purposes of this subchapter, the term “international organization” means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter (including the amendments made by this subchapter) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this

subchapter or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this subchapter.

The record reflects that the petitioner's father, Juan L. Garibaldi, served as the Deputy Consul General of Argentina in New York from March 1993 until April 1996 and as the Consul General of Argentina in Houston from April 1996 until September 1998. The evidence submitted by the petitioner indicates that she entered the United States as an A-1 nonimmigrant (the family member of a diplomat) and changed her status to that of an F-1 nonimmigrant student. In the letter submitted with her petition, the petitioner argued that although her father was not an officer or employee of an international organization, "the same equal treatment and fair opportunity for such eligibility should also be granted to the direct dependents of former foreign diplomats and/or consular officials." The director dismissed the petitioner's argument finding that neither the statute nor the regulations contained any provisions for eligibility as a special immigrant based upon a parent who was a foreign diplomat or consular official.

The petitioner also submitted a copy of a Form I-360 approval notice for her brother indicating that he had been approved under the same classification sought by the petitioner. The petitioner argued that given that she and her brother share the same background, the petitioner should be afforded the same treatment and that her application for status as a special immigrant should be approved. The director dismissed this argument noting that the Service was not required to approve an application or petition where eligibility has not been demonstrated, simply because of an erroneous approval for another alien. Accordingly, the director denied the petition.

The AAO concurs with the director's reasoning on this issue. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. The fact that the service center director approved the petitioner's brother's petitions does not bind the AAO to the same determination. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As it appears that the petitioner's brother's Form I-360 was approved based upon the same facts and evidence submitted by the petitioner in the instant case, such an approval constitutes material and gross error on the part of the director.¹ CIS must not compound the error by approving an identical petition filed by the petitioner. Instead, the erroneous approval of the brother's petition must be revoked.

¹ Service records confirm that the petitioner's brother's Form I-360 (EAC 03 227 53384), was approved by the Director, Vermont Service Center, on April 1, 2004. His Form I-485, Application to Adjust Status (MSC 04 282 14102), was approved by the Director, Newark District Office, on July 15, 2005.

A review of Service records establishes that the petitioner's brother adjusted status to that of a lawful permanent resident based on the erroneously approved Form I-360. Accordingly, the District Director, Newark District Office, must review the record of proceeding for approved Form I-485 (MSC 04 282 14102). If the District Director's review confirms that the brother was not in fact eligible for adjustment of status, the director must rescind the previously accorded status in accordance with the regulation at 8 C.F.R. § 246.1.

On appeal, the petitioner states that the director's decision was erroneous because he "mistakenly considered that the petitioner sought to be classified [as a] special immigrant as an unmarried daughter of an international organization employee." The petitioner claims that rather than seeking approval as the unmarried daughter of an international organization employee, she sought classification as "Case Type: I-360 Other," as the "unmarried daughter . . . of a foreign government's designated principal resident representative."

The petitioner's statement is not persuasive as she cannot seek eligibility for a classification that does not exist. The term special immigrant is defined in section 101(a)(27) of the Act and lists several different categories of immigrants who may be considered as a special immigrant. A petitioner must meet the eligibility requirements of one of these categories in order to be eligible for classification. The definition of special immigrant does not contain a category for unmarried sons or daughters of former diplomats or consular officials. Further, a review of the evidence contained in the record does not establish that the petitioner meets any of the other types of immigrants defined in section 101(a)(27) of the Act such as to be eligible for classification as a special immigrant.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The director's decision is affirmed. The petition is denied.