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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: FEB 26 2007

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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.

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 beneficiary is a native of Congo and citizen of the Democratic Republic of Congo. He was employed by the African Union in the United States in G-4 status, and he is now retired. As the African Union constitutes 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 petitioner failed to file his Form I-360 petition within six months of his retirement from the African Union, as required by section 101(a)(27)(I)(iii)(II) of the Act. The director further found that the petitioner failed to show that he has resided and been physically present in the United States in G status for periods totaling at least one-half of the seven years before the date of his petition and for a period or periods aggregating at least 15 years before the date of his retirement from the African Union, as required by section 101(a)(27)(I)(iii)(I) of the Act. The petition was denied accordingly.

On appeal, counsel for the petitioner asserts that the petitioner did file his petition within six months of his retirement. *Brief from Counsel*, dated May 29, 2006. Counsel further contends that the petitioner has met the requirements of section 101(a)(27)(I)(iii)(I) of the Act, as he has been present in the United States for extended periods of time in G-4 status since the 1980s. *Id.* at 2.

The record contains a brief from counsel; copies of the petitioner's passports; a letter from the Permanent Observer Mission of the African Union to the United Nations indicating that the petitioner was the holder of a G-4 visa working for the African Union from May 14, 1977 to October 13, 2003; a statement from the petitioner; a copy of documents in connection with the petitioner's mortgage for real property in the United States; a copy of the petitioner's title insurance policy for land in the United States; a copy of a tax deed for the petitioner; a copy of an apartment lease for the petitioner; a letter from Chase Bank regarding the petitioner's banking there; copies of cable television bills for the petitioner, and; a copy of the UN Bluebook #287 dated January 2002 indicating the petitioner's name and title with the organization. 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)(iii) as follows:

[A]n immigrant who is a retired officer or employee of such an international organization, and who

- (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), 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 15 years before the date of the officer or employee's retirement from any such international organization, and

- (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the Immigration and Nationality Technical Corrections Act of 1994, whichever is later

The first issue in the present matter is whether the petitioner filed his Form I-360 petition within six months of his retirement from the African Union, as required by section 101(a)(27)(I)(iii)(II) of the Act. The record contains a document from the United Nations titled "Notification of Final Departure of Members of Permanent Missions to the United Nations." This document indicates that the petitioner's "Date of final departure from the Permanent Mission" was November 1, 2003. In support of this departure date, on his Form G-325A the petitioner provided that he ended his employment with the African Union in November 2003. The petitioner filed his petition on May 28, 2004, six months and 27 days after his retirement on November 1, 2003.

On appeal, counsel asserts that the petitioner's retirement "was not completed until December 29, 2003." *Brief from Counsel* at 1. Counsel states that the petitioner's last paycheck was received on December 20, 2003. *Statement from Counsel on Form I-290B*, dated May 3, 2006. The record contains a letter from the African Union authorizing the transfer of the petitioner's final pension entitlements dated December 29, 2003.

Upon review, the petitioner has not shown that he met the six month filing deadline provided in section 101(a)(27)(I)(iii)(II) of the Act. The petitioner has provided no evidence to support that the date he received final payment from the African Union constitutes the date he ceased to be employed there. Counsel's assertion is not persuasive, as documentation from the African Union clearly reflects that the petitioner's final date of employment was November 1, 2003. Because the petitioner failed to file his petition within six months of his retirement from the African Union, he does not meet the requirements of section 101(a)(27)(I)(iii)(II) of the Act. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioner has shown that, while maintaining G status, he has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date he filed his petition, and for a period or periods aggregating at least 15 years before the date of his retirement from the African Union. Section 101(a)(27)(I)(iii)(I) of the Act.

The petitioner stated that he first entered the United States in G-4 status in the Summer of 1982, yet he indicated that he no longer possesses his passport or other documentation to reflect this entry. *Statement from the Petitioner*, dated January 23, 2006. The petitioner submitted copies of his passports that contain numerous G-4 visas, including those valid from December 20, 1997 to March 30, 1998; from April 8, 1999 to July 8, 1999; from September 21, 2000 to December 20, 2000; from July 12, 2001 to October 11, 2001; from February 14, 2002 to May 13, 2002; from July 2, 2002 to October 1, 2002, and; from August 12, 2003 to November 2, 2003. Thus, the petitioner has only provided evidence of his potential entry to the United States as early as December 30, 1997. This date is approximately five years and 10 months prior to the petitioner's retirement with the African Union. All evidence of the petitioner's presence in the United States, including

documentation of his mortgage and bank accounts, relates to his activities in the country after December 20, 1997. Accordingly, the petitioner has failed to show that he has accrued 15 years of presence in the United States prior to his retirement with the African Union, as required by section 101(a)(27)(I)(iii)(I) of the Act.

Counsel contends that section 101(a)(27)(I)(iii)(I) of the Act does not require the petitioner to maintain physical residence and presence in the United States for 15 years. *Brief from Counsel* at 2. Counsel asserts that section 101(a)(27)(I)(iii)(I) of the Act merely “requires the Petitioner to maintain G-4 status for 15 years and to have worked for the international organization for 15 years before his retirement.” *Id.* Counsel asserts that the petitioner has maintained G-4 status for more than 15 years, as he first entered the United States in G-4 status in the 1980s. *Id.*

Upon review, counsel’s assertions are not persuasive. As noted above, the petitioner has not submitted evidence to show that he entered or resided in the United States prior to December 20, 1997. Further, the fact that an individual obtains a G-4 visa does not constitute “maintaining the status of a nonimmigrant under paragraph (15)(G)(iv),” as contemplated by section 101(a)(27)(I)(iii)(I) of the Act. An individual is only considered a nonimmigrant under paragraph (15)(G)(iv) when he is in the United States pursuant to lawful admission in G status. Contrary to counsel’s contention, section 101(a)(27)(I)(iii)(I) of the Act does require the petitioner to have accrued 15 years of physical presence in the United States. The fact that the petitioner may have visited the United States in the 1980s pursuant to a G-4 visa does not reflect that he maintained the status of a nonimmigrant under paragraph (15)(G)(iv) from the date of his first entry until he retired from the African Union in 2003.

The record contains evidence that the petitioner was frequently outside the United States between the 1980s and the date that he retired from the African Union. Specifically, copies of the petitioner’s passports show that he received visas for and traveled to Switzerland, Belgium, Italy, the United Kingdom, and Ethiopia between 1995 and 2000. On his Form G-325A, the petitioner stated that he resided in [REDACTED] Ethiopia from April 1999 to October 2000. Thus, the petitioner clearly was not present in the United States in G-4 status continuously from the 1980s until his retirement from the African Union. As stated above, the petitioner has provided no independent documentation of his possible presence in the United States prior to December 20, 1997.

Based on the foregoing, the petitioner has failed to show that he met the physical presence requirement of section 101(a)(27)(I)(iii)(I) of the Act. For this additional 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.