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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 08 2007
SRC 06 036 50800

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Physician Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(H) of the Act, 8 U.S.C. § 1101(a)(27)(H)

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, appearing to read "M. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant physician pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). The director determined that the petitioner had not met any of the statutory requirements pertaining to the classification sought.

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

- (H) an immigrant, and his accompanying spouse and children, who-
 - (i) has graduated from a medical school or has qualified to practice medicine in a foreign state,
 - (ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,
 - (iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and
 - (iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry.

The above list of requirements uses the conjunction “and” rather than “or.” Therefore, in order to qualify as a special immigrant physician, the petitioner must meet all four of the above requirements.

On the Form I-360 petition, the petitioner lists her date of birth as May 29, 1972. Under “Date of Arrival,” the petitioner states that she arrived in the United States on March 19, 2003. The petitioner’s initial submission includes a copy of her 1972 birth certificate and various government-issued documents showing that she resided in Mexico as recently as February 2003. The petitioner also submits a translated copy of her medical school transcript and diploma, indicating that she attended the National Autonomous University of Mexico from 1992 to 2000. That university officially granted her the title of “Dental Surgeon” in July 2002.

On November 30, 2005, the director issued a request for evidence. Among other things, the director instructed the petitioner to establish that she was a licensed physician, practicing in the United States as of January 9, 1978; that she entered the United States as an H or J nonimmigrant prior to January 10, 1978; and that she has been continuously present in the United States since that time. In response, the petitioner has submitted copies of previously submitted documents relating to her training in Mexico.

The director denied the petition on February 15, 2006, stating that the petitioner had failed to submit evidence to meet the statutory requirements listed at section 101(a)(27)(H) of the Act.

On appeal, the petitioner states: "I was not aware to submit forms I-601 & I-485A along with the fees with the original application. I am requesting a new appeal, opinion." The petitioner does not explain the relevance of these assertions to the director's findings.

Section 101(a)(27)(H)(ii) of the Act requires the petitioner to show that she was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date. The record shows that the beneficiary was five years old on January 9, 1978. Even now, the record contains no evidence that the petitioner has ever been licensed to practice medicine in the United States.

Section 101(a)(27)(H)(iii) of the Act requires the petitioner to show that she entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978. The record contains no evidence of such entries, and, because the petitioner was five years old as of the cutoff date, it is virtually certain that she did not enter under those employment-based classifications at that time.

Finally, section 101(a)(27)(H)(iv) of the Act requires the petitioner to show that she has been continuously present in the United States in the practice or study of medicine since the date of such entry. There is no evidence that the petitioner has ever practiced or studied medicine in the United States. Also, as noted above, the beneficiary did not enter the United States until 2003, and therefore she cannot have been continuously present in the United States since January 9, 1978. She missed the statutory cutoff date by over 25 years.

Even the petitioner's satisfaction of section 101(a)(27)(H)(i) is in doubt, as it is not clear whether or not a dental degree constitutes a medical degree for the purposes of this section of law. We need not address this issue here, however, as the evidence of record overwhelmingly demonstrates that the petitioner is otherwise ineligible for the benefit sought. An additional finding regarding her dental degree would have no effect on the ultimate outcome of the decision.

The petitioner was not practicing medicine in the United States as of January 9, 1978, and therefore she is statutorily ineligible for classification as a special immigrant physician. There is no remedy for the defects in her petition, and there is no way that she can qualify as a special immigrant physician under the law as it currently exists. The statutory provisions are not mere guidelines, to be enforced or waived at the director's discretion. They are, rather, fundamental requirements that cannot be separated from the classification. The petitioner has never explained why she believes that she qualifies for this classification, when it is clearly impossible for her ever to meet the basic eligibility requirements.

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 sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.