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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date JUN 02 2008

IN RE: Petitioner:

[REDACTED]

Beneficiary:

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 and citizen of Ecuador. The petitioner filed a Form I-360 petition on behalf of the beneficiary in which she indicated that she was seeking to classify the beneficiary as a special immigrant international organization employee or family member 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 show that the beneficiary was an international organization employee or related family member. *Decision of the Director*, dated March 31, 2008.

On appeal, the petitioner asserts that she misunderstood the choices on Form I-360, and that she believed the “international organization employee” clause was separate from the “or a family member” clause of choice “g” under Part 2 of the form. *Statement from the Petitioner on Form I-290B*, dated April 7, 2008. She indicates that she now wishes to change her choice to “k,” as she is a U.S. citizen petitioning for her husband as a family member or relative and the petitioner therefore best placed under the “other” category. *Id.*

The record contains statements from the petitioner and beneficiary; copies of birth certificates for the petitioner, beneficiary, and their child; a copy of the marriage certificate for the petitioner and beneficiary, and; copies of the petitioner’s and beneficiary’s passports. 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

Upon review, the record reflects that the beneficiary is not qualified for special immigrant status as an international organization employee or family member pursuant to section 203(b)(4) of the Act. In a response to a request for evidence issued by the director, the petitioner stated that an immigration officer informed her that she does not require a Form I-360 petition. *Statement from Petitioner*, submitted February 25, 2008. She provided that “[t]he request for military retirement does not apply to either of us and evidence of being an employee in G-4 status does not apply either, we don’t even know what that is.” *Id.* at 1. She provided that she only sought to sponsor the beneficiary as the spouse of a U.S. citizen, and thus she is unaware of why U.S. Citizenship and Immigration Services (CIS) staff requested that she file a Form I-360 petition.

Nothing in the record reflects that the petitioner or beneficiary have worked for an international organization that would qualify the beneficiary for status as a special immigrant under section 203(b)(4) of the Act.

The petitioner now seeks to amend her Form I-360 petition in order for the beneficiary to be considered under a different classification. However, the petitioner may not make material changes to the petition on appeal in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Based on the foregoing, the petitioner has not shown that the beneficiary is eligible for special immigrant status, and the petition may not be approved.

The AAO observes that the Form I-360 petition was likely filed in error. The denial of the petition is without prejudice to the petitioner or beneficiary, and they may apply for any other benefit under the Act for which they qualify. It appears that the petitioner may be eligible to file a Form I-130, Petition for Alien Relative. She should explore that option.

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.