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JAN 16 2009

FILE: LIN 08-219-51060 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
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:

UNREPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 El Salvador who has resided in the United States as the G-4 daughter of an officer or employee of the United Nations Development Programme in New York, an international organization described in section 101(15)(G)(i) of the Act. She 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 applicant is statutorily ineligible for special immigrant status pursuant to section 101(a)(27)(I)(i) of the Act, as she did not file her Form I-360 petition on or before her 25th birthday. *Decision of the Director*, dated September 17, 2008.

On appeal, the applicant's father explains that, although the beneficiary filed her petition after the age of 25, she is disabled and dependent on him and his wife. *Statement from Beneficiary's Father*, dated October 16, 2008. He explained that the petition was filed based on the understanding that the beneficiary's chronological age would not hinder her eligibility due to her disability. *Id.* at 1.

The record contains, in pertinent part, statements from the beneficiary's father as well as medical and benefits documentation to reflect that the beneficiary has a history of seizures, hydrocephalus with "VP shunt," mental retardation, and headaches. 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)(i) as follows:

[A]n immigrant who 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 October 24, 1988, whichever is later

At issue in the present proceeding is whether the applicant may continue to qualify for special immigrant status pursuant to section 101(a)(27)(I)(i) of the Act, despite the fact that she applied after the age of 25. The beneficiary was born on February 28, 1977, and the Form I-360 petition was filed on July 31, 2008, when she was 31-years-old. As noted above, section 101(a)(27)(I)(i)(II) of the Act clearly states that the beneficiary must apply for special immigrant status no later than her twenty-fifth birthday. Section 101(a)(27)(I)(i)(II) of the Act. Nothing in the Act or regulations affords the AAO discretion to waive the requirements of section 101(a)(27)(I)(i) of the Act. Accordingly, while the AAO sympathizes with the challenges that the beneficiary's family faces due to her disability, the AAO is unable to waive the filing deadline imposed by section 101(a)(27)(I)(i)(II) of the Act. Based on the foregoing, the applicant has not shown that she is eligible to be classified as a special immigrant pursuant to section 101(a)(27)(I)(i) of the Act.

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.