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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

NOV 19 2010

IN RE:

[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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the special immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as the son of an employee of an international organization pursuant to section 101(a)(27)(I) of the Act, 8 U.S.C. § 1101(a)(27)(I).

The director denied the petition on the basis of her determination that the petitioner had failed to demonstrate that he had resided and been physically present in the United States for a period totaling at least seven years between the ages of five and 21 years while maintaining G-4 status pursuant to section 101(a)(15)(G)(iv) of the Act, as required by section 101(a)(27)(I)(i) of the Act. On appeal, counsel claims the petitioner met the physical presence requirement.

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). . . .” Among aliens 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 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. . . .

The petitioner, a citizen of Benin born on April 29, 1987, was granted G-4 nonimmigrant status on November 22, 2005. He filed the instant Form I-360 on February 19, 2010.<sup>1</sup> The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner’s response to the RFE, the director denied the petition on June 1, 2010.

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<sup>1</sup> This is the second Form I-360 filed by the petitioner. The first, [REDACTED] was filed on March 12, 2007 and denied on December 3, 2007. The AAO dismissed a subsequent appeal on June 17, 2008.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

As noted, the director denied the petition because the petitioner failed to demonstrate that he had been physically present in the United States for a period totaling at least seven years between the ages of five and 21 years while maintaining G-4 status. The AAO agrees: as the petitioner was first granted G-4 status on November 22, 2005 and reached the age of 21 on April 29, 2008, he held G-4 status for only two years and seven months during that period of time. Moreover, counsel concedes that the petitioner did not accrue seven years of physical presence in G-4 status in the United States between the ages of five and 21 years. Instead, counsel argues that the time the petitioner spent in G-1 status constitutes maintenance of status in the United States pursuant to section (15)(G)(iv) of the Act, and that the petitioner is statutorily eligible for classification pursuant to section 203(b)(4) of the Act on that basis. As the record indicates that the petitioner's physical presence in the United States in G-1 and G-4 status between the ages of five and 21 years of age did exceed seven years, the issue before the AAO on appeal is therefore whether time in G-1 status constitutes "maintaining the status of a nonimmigrant under paragraph (15)(G)(iv)," as required by section 101(a)(27)(I)(i) of the Act. We find that it does not.

Section 101(a)(15)(G) of the Act contains five subsections that provide definitions of categories of individuals who may be afforded G status, as follows:

- (i) a designated principal resident representative of a foreign government recognized *de jure* by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;
- (ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;
- (iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized *de jure* by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;
- (iv) officers, or employees of such international organizations, and the members of their immediate families;

- (v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees[.]

Congruent with the five subsections of section 101(a)(15)(G) of the Act, the U.S. Department of State issues G visas in the categories of G-1, G-2, G-3, G-4, and G-5. 9 FAM 41.24 N.1. The United States Department of State *Foreign Affairs Manual* (FAM), volume 9, section 41.24, Note 1, states the following:

A qualified person may be issued a "G" visa in one of the categories listed below:

- (1) G-1 visas—Issued to members of a permanent mission of a recognized government to an international organization, regardless of rank, and to members of their immediate families. G-1 visas are also issued to the mission's secretaries, chauffeurs and custodial employees, except domestic employees, who are issued G-5 visas.
- (2) G-2 visas—Issued to representatives of a recognized government and to members of their immediate families traveling to the United States temporarily to attend meetings of a designated international organization. G-2 officials may represent their governments at the United Nations General Assembly or as TDY officers to that country's mission to the international organization. G-2 visas may be issued to military officers who are assisting the United Nations Secretariat with peacekeeping matters. Family members may also be issued G-2 visas.
- (3) G-3 visas—Issued to representatives of non-recognized or nonmember governments, regardless of rank, and to members of their immediate families. G-3 visas should also be issued to representatives of such governments so as to participate in temporary meetings of designated international organizations (e.g., a meeting of the United Nations General Assembly and Security Council).
- (4) G-4 visas—Issued to personnel of any rank who are proceeding to the United States to take up an appointment at a designated international organization (including the United Nations). Members of their immediate families may also be issued G-4 visas, except their domestic employees, who are issued G-5 visas.
  - (a) Officers and employees of designated international organizations, who are not assigned in the United States, may be accorded G-4 classification if they intend to transit the

United States. The number of entries should be limited to the official request. (See 9 FAM 41.24 N10.)

- (b) G-4 visas may also be issued to personnel of any rank on the payroll of a designated international organization proceeding to the United States on behalf of that organization.
- (5) G-5 visas—Issued to the attendants and personal employees of persons in G-1 through G-4 status.

When read together, section 101(a)(15)(G)(i) of the Act and volume 9, section 41.24 N.1 of the FAM, indicate clearly that the Department of State issues one of five G visas depending upon the provision of section 101(a)(15)(G) of the Act under which the applicant qualifies for G status. For example, when an applicant meets the definition under section 101(a)(15)(G)(i) of the Act, the Department of State issues a G-1 visa. 9 FAM 41.24 N.1(1); section 101(a)(15)(G)(i) of the Act. When an applicant meets the definition under section 101(a)(15)(G)(iv) of the Act, the Department of State issues a G-4 visa, and so forth. 9 FAM 41.24 N.1; section 101(a)(15)(G) of the Act. Accordingly, we disagree with counsel's argument on appeal that section 101(a)(15)(G) of the Act does not distinguish between G-1 and G-4 visa status.

The applicant was afforded G-1 status based upon his father's employment. The fact that he was afforded a G-1 visa by the Department of State and G-1 status upon entry reflects that he was deemed eligible for G status under section 101(a)(15)(G)(i) of the Act. Accordingly, the time that the applicant spent in the United States in G-1 status constituted presence while maintaining the status of a nonimmigrant under section 101(a)(15)(G)(i) of the Act, not section 101(a)(15)(G)(iv) of the Act, and we are not persuaded by counsel's argument to the contrary on appeal.

As noted previously, section 101(a)(27)(I)(i) of the Act specifically states that an applicant must meet the residency requirements "while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv)." The applicant accrued only two years and seven months of presence in the United States while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) before reaching the age of 21 years. Accordingly, he has not established his eligibility for classification as a special immigrant pursuant to section 101(a)(27)(I)(i) of the Act. The petition, therefore, must remain denied.

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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.