



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-N-M-

DATE: MAY 3, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a citizen of Kenya, seeks classification as a special immigrant unmarried son or daughter of an international organization employee under section 203(b)(4) – “Certain Special Immigrants” – and section 101(a)(27)(I)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1153(b)(4) and 1101(I)(i). This employment-based immigrant classification allows the son or daughter of a current or former employee of an international organization located in the United States to petition for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner was not resident and physically present in the United States for the minimum time periods prescribed in the Act, and thus was not eligible for the immigration benefit sought. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

The type of special immigrant status sought by the Petitioner is defined in section 101(a)(27)(I)(i) of the Act as:

an 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 the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later.

Thus, the instant Petitioner must have been resident and physically present in the United States:

- at least half of the seven years preceding the filing of the Form I-360, and
- at least seven years between the ages of 5 and 21.

(b)(6)

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The Petitioner must also have filed the Form I-360 petition by his 25th birthday.

The Form I-360 petition was filed on June 8, 2015,¹ well before the Petitioner's 25th birthday. The Director denied the petition on September 11, 2015. In his decision the Director reviewed the evidence of record, which showed that the Petitioner was born in ████████ Kenya, on ████████ and found that he entered the United States on May 25, 2008, which was the starting date for his accrual of residence and physical presence in the United States. Therefore, the Petitioner fulfilled the condition that for at least half of the seven years prior to filing the instant petition on June 8, 2015, he was resident and physically present in the United States. However, the Petitioner could not fulfill the other condition of at least seven years residence and physical presence in the United States between the ages of 5 and 21 since that time period expired for the Petitioner on ████████ 2014, the day before he turned ████████. At that point the Petitioner had accrued less than seven years of residence and physical presence since his arrival in the United States on May 25, 2008. The Director concluded, therefore, that the Petitioner was statutorily ineligible at the time of filing for the special immigrant status sought in this petition.

The Petitioner filed a timely appeal, along with a letter and supporting documentation. The Petitioner does not challenge the legal correctness of Director's decision. Rather, he discusses his ties to the United States, and those of other family members, and requests that we reverse the denial of his petition as a matter of discretionary consideration.

The law is clear, however, that a petitioner for special immigrant status under sections 203(b)(4) and 101(a)(27)(I)(i) of the Act must meet the minimum residence and physical presence requirements specified therein. We have no discretion to waive or alter those requirements. In this case, the Petitioner did not accrue at least seven years of residence and physical presence in the United States between the ages of 5 and 21. In accord with the Director, therefore, we find that the Petitioner is ineligible for special immigrant status under sections 203(b)(4) and 101(a)(27)(I)(i) of the Act. Accordingly, the appeal will be dismissed.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 C.F.R. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-N-M-*, ID# 16987 (AAO May 3, 2016)

¹ On the same date the Petitioner also filed a Form I-485, Application to Register Permanent Residence or Adjust Status.