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U.S. Citizenship  
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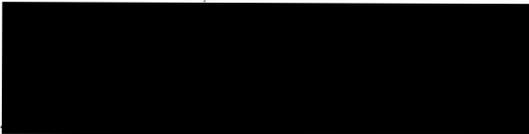


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 07 2006  
EAC 05 009 52598

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Child Pursuant to Section 204(a)(1)(B)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)

ON BEHALF OF PETITIONER:



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, Vermont Service Center, denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien battered or subjected to extreme cruelty by his United States lawful permanent resident parent.

The director denied the petition, finding that the petitioner failed to establish that he was the child of a U.S. lawful permanent resident.

On appeal, counsel submits a brief and copies of documents previously submitted.

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part:

An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past two years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title [section 201(b)(2)(A) of the Act], and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

The eligibility requirements for a petition filed under section 204(a)(1)(B)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part:

(ii) *Parent-child relationship to the abuser.* The self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act *when the petition is filed . . .* [emphasis added]

Section 101(b)(1) of the Act defines a "child" as, in pertinent part, "an unmarried person under twenty-one years of age."

In this case, the petitioner was born on October 5, 1982. The petitioner's mother, [REDACTED] married [REDACTED] a U.S. lawful permanent resident, on February 14, 1997 when the petitioner was 14 years old. Although the petitioner had a parent-child relationship with [REDACTED] at that time, he turned 21 on October 5, 2003 and filed this Form I-360 on October 12, 2004, when he was 22 years old. Hence, the petitioner was no longer a child as defined by section 101(b)(1) of the Act when he filed his Form I-360 and he is consequently ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act.

On appeal, counsel claims that the petitioner was eligible to file his Form I-360 until the age of 25 pursuant to section 805 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"). Counsel is mistaken. VAWA 2005 amended section 204(a)(1)(D) of the Act to allow sons and daughters of abusive U.S. citizens to file a self-petition under section 204(a)(1)(A)(iv) of the Act until they are 25 years of age if they were eligible to file such a petition when they were under 21 years old and they show that the abuse was at least one central reason for the filing delay. *See* Section 805(c) of P.L. 109-162, Jan. 5, 2006, [REDACTED]. However, VAWA 2005 did not extend this provision to sons and daughters of abusive lawful permanent residents of the United States such as the petitioner in this case.

On appeal, counsel further contends that the director erroneously denied the petitioner's Form I-485 application to adjust status. Again, counsel is misguided. The petitioner filed a Form I-485 application with the New York City District Office on August 7, 2002. That application was not before the director of the Vermont Service Center, the director had no jurisdiction over the petitioner's Form I-485 application and accordingly did not adjudicate that application.

Moreover, if the New York City District Office denied the petitioner's Form I-485 application, that decision cannot be appealed. The regulation at 8 C.F.R. § 245.2(a)(5)(ii) provides: "No appeal lies from the denial of an application [to adjust status under section 245 of the Act] by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240."

In addition, the AAO lacks jurisdiction over such appeals. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO only has jurisdiction over adjustment applications "when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(JJ) (as in effect on February 28, 2003). Accordingly, the petitioner's Form I-485 application is outside of our jurisdiction.

The present record does not demonstrate that the petitioner was a child when he filed this petition, as required by section 204(a)(1)(B)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID). The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that Citizenship and Immigration Services (CIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiency of his case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.