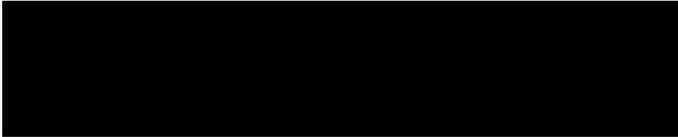


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U.S. Citizenship
and Immigration
Services



LR

FILE:



Office: PHOENIX, AZ

Date:

DEC 10 2008

IN RE:

Applicant:



PETITION:

Application for Adjustment of Status under Section 209(b) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1159(b)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona denied the application and the applicant subsequently filed a motion to reopen. The district director accepted the applicant's motion. He reaffirmed his denial of the application and certified his decision to the Administrative Appeals Office (AAO). The district director's decision will be withdrawn and the matter returned to him for continued processing.

The applicant is a native of Honduras who is the beneficiary of a Form I-730, Refugee/Asylee Relative Petition, approved on June 9, 1994. On March 27, 2000, she submitted an application to adjust status to that of lawful permanent resident pursuant to section 209(b) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1159(b).

Section 209(b) of the Act states in pertinent part:

The Secretary of Homeland Security . . . may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who –

- 1) applies for such adjustment,
- 2) has been physically present in the United States for at least one year after being granted asylum,
- 3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,
- 4) is not firmly resettled in any foreign country, and
- 5) is admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of examination for adjustment of such alien.

The director denied the application to adjust status, finding that the applicant had failed to establish that she held asylee status, as required for adjustment under section 209(b) of the Act. The director concluded that the applicant had neither been inspected nor admitted to the United States as a derivative asylee based on the approved Form I-730 or otherwise granted asylee status. *Decision of the Director*, April 3, 2006.

Pursuant to the regulation at 8 C.F.R. § 208.21(a), the child of an asylee may also be granted asylum if accompanying or following to join a principal alien granted asylum unless it is determined that the child is ineligible for asylum under one of the bars set forth in section 208(b)(2)(A) of the Act or the regulation at 8 C.F.R. § 208.13((c)(2)(i). The applicant is the beneficiary of an approved Form I-730, Refugee/Asylee Relative Petition, filed by her mother on May 11, 1994. *Form I-797C, Notice of Action*, dated June 9, 1994.

The applicant entered the United States without inspection on April 23, 1997. While the AAO does not condone the manner in which the applicant entered the United States, it does not find that it prevents her from benefiting from the approved Form I-730 filed by her mother. An individual in the United States who is the beneficiary of an approved Form I-730 filed by an approved asylum applicant and has not married or aged out is, by regulation, an asylee. *See* 8 C.F.R. § 208.21(c). Accordingly, at the time she

filed the Form I-485, Application to Register Permanent Residence or Adjust Status on March 27, 2000, the applicant was an asylee pursuant to section 208(b)(3) of the Act and eligible to apply for adjustment. Although she has subsequently turned 21 years of age, the applicant continues to be eligible for adjustment as her Form I-485 was pending on August 6, 2002, the effective date of the Child Status Protection Act and she, therefore, retains the classification of child for the purposes of adjustment under section 209(b) of the Act.¹ Accordingly, the district director's decision will be withdrawn and the matter returned to him for continued processing.

ORDER: The district director's decision is withdrawn. The matter is returned to the district director for continued processing consistent with the preceding discussion.

¹ The AAO also notes that it is established practice for U.S. Citizenship and Immigration Services (USCIS) to adjust the status of individuals who are the beneficiaries of approved Form I-730s and who have entered the United States without inspection. When a Form I-485, filed by the beneficiary of an approved Form I-730 who has entered the United States without inspection and who has never been interviewed, is received by the Nebraska Service Center (NSC), it is forwarded to a USCIS field office for an interview to establish the identity of the applicant and the adjudication of the Form I-485. Only in cases where the Form I-730 has been returned by an overseas consulate because the beneficiary has avoided consular processing, does the NSC reopen it. In such cases, the Form I-730 is readjudicated and the beneficiary scheduled for security checks.