



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE [Redacted]
EAC 00 099 51731

Office: Vermont Service Center

Date: AUG 23 2000

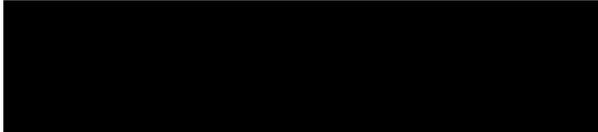
IN RE: Petitioner:
Beneficiary:



Public Copy

APPLICATION: 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).

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of [REDACTED] who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(iii), as the battered child of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish eligibility for the benefit sought because her father was deported (removed) from the United States prior to the filing of the self-petition.

On appeal, counsel asserts that the petitioner was battered or subjected to extreme cruelty in the United States by a parent who, at the time of the extreme cruelty, was a lawful permanent resident of the United States. She claims that to deny a visa to a child that has been extremely abused by the parent and to send her to where the abusive parent has been deported will only make mockery of the Violence Against Women Act.

8 C.F.R. 204.2(e)(1) states, in pertinent part, that:

(i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the child of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character; and

(G) Is a person whose deportation (removal) would result in extreme hardship to himself or herself.

The petition, Form I-360, shows that the petitioner arrived in the United States on December 22, [REDACTED]. However, her current immigration status or how she entered the United States was not shown. On February 28, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident parent while residing with that parent.

8 C.F.R. 204.2(e)(1)(i)(A) requires that the petitioner is the child of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(e)(1)(iii) requires that the abusive parent must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.

The Service record reflects that the petitioner's father, a native and citizen of [REDACTED] was removed from the United States on three different occasions: On February 3, [REDACTED] on September 3, [REDACTED] and again on January 14, [REDACTED].

The petitioner's father was no longer a lawful permanent resident of the United States when the petitioner filed the self-petition on February 28, 2000. The petitioner, therefore, is statutorily ineligible for the benefit sought under the provisions of section 204(a)(1)(B)(ii) of the Act.

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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.