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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: JAN 24 2003
EAC 02 121 51946

IN RE: Petitioner: [redacted]
Beneficiary:

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: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 case will be remanded to the director for further action.

The petitioner is a native and citizen of Mexico 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 that she qualifies for the desired classification, as the child of a citizen or lawful permanent resident of the United States, because she is over the age of 21 years. The director, therefore, denied the petition.

On appeal, the petitioner asserts that the Service should consider the fact that she was a child when her father filed a Form I-130 relative petition on her behalf, therefore, the I-360 self-petition should relate back to the date when the I-130 petition was filed. The petitioner further asserts that the Service erroneously denied the self-petition, especially in light of the new law that was passed by Congress and signed by the President of the United States protecting children from "aging out."

The director has requested that this case be remanded to him so he may reopen and reconsider his decision. Accordingly, without addressing the merits of the case, this case will be remanded. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.