



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

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

MATTER OF N-X-T-

DATE: JULY 20, 2016

APPEAL OF PORTLAND, OREGON FIELD OFFICE DECISION

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

The Petitioner, a citizen of Vietnam, seeks classification as an Amerasian. *See* Immigration and Nationality Act (the Act) § 204(f), 8 U.S.C. § 1154(f). Under the Amerasian Act of October 22, 1982, Public Law 97-359, certain Asian-born children of a United States citizen father may self-petition as an immediate relative or son or daughter of a U.S. Citizen to obtain lawful permanent resident status.

The Field Office Director, Portland, Oregon, denied the petition. The Director concluded that the Petitioner had not established eligibility to self-petition as an Amerasian under section 204(f) of the Act, and that although he claimed eligibility for Amerasian classification under the Amerasian Homecoming Act of 1987, Public Law 100-202, this relief is not available through filing a self-petition and can be granted only by the U.S. Department of State.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the Director erred in denying the Petitioner's request for Amerasian classification and asserts that, in addition to being able to self-petition under section 204(f) of the Act for such classification using Form I-360, an individual may alternatively establish Amerasian status pursuant to Public Law 100-202.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

The Applicant is seeking classification as an Amerasian. The Amerasian Act of October 22, 1982, Public Law 97-359, amended the Act to include current section 204(f), which allows children fathered by U.S. citizens and born in Korea, Vietnam, Laos, Kampuchea, or Thailand After 1950 and Before October 22, 1982, to file a petition for classification under section 201(b), 203(a)(1), or 203(a)(3) of the Act as an immediate relative or son or daughter of a U.S. citizen.

The Applicant, who is not the son of a U.S. citizen, but whose half-sister was fathered by a U.S. citizen, further claims to be eligible for Amerasian classification under the Amerasian Homecoming

(b)(6)

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Act of 1987, Public Law 100-202 (the AHA). Section 584 of Public Law 100-202 allows certain foreign nationals to be admitted to the United States as immigrants if, as of December 22, 1987, they are residing in Vietnam and are issued an immigrant visa. To be eligible for Amerasian classification under the AHA, a foreign national must establish that he or she was born in Vietnam after January 1, 1962, and before January 1, 1976, and was either “fathered by a U.S. citizen (such an alien in this section being referred to as a ‘principal alien’); is the spouse or child of a principal alien . . . or . . . is the principal alien’s natural mother (or is the spouse or child of such mother) . . . and is accompanying, or following to join, the principal alien.”

II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Vietnam on [REDACTED] of two non-U.S. citizen parents, and the Petitioner does not claim to have a U.S. citizen father. The record indicates that he is the half-sibling of a sister fathered by a U.S. citizen and, further, that he was issued an immigrant visa pursuant to the AHA as the child of the natural mother he has in common with the principal alien, his half-sister. The Petitioner was admitted to the United States as a lawful permanent resident on July 7, 1989.

In 1992 and 1993, the Petitioner was convicted of three theft offenses in California, and in 2003, he was placed in removal proceedings and ordered removed by an immigration judge. The Petitioner later filed a motion to reopen, which was denied. He appealed the denial of the motion, and his case was later remanded to the immigration judge for further proceedings. In 2013, the immigration judge found the Petitioner ineligible for cancellation of removal and other relief from removal because of a 2010 identity theft conviction and concluded that he must apply for a waiver of inadmissibility (Form I-601) in conjunction with an application for adjustment of status (Form I-485). The immigration judge continued his removal proceedings to allow him to submit these applications. In order to establish eligibility to apply for adjustment of status, the Petitioner submitted the Form I-360 in August 2013 again seeking classification as an Amerasian under the AHA through his mother, the mother of his Amerasian sister.

III. ANALYSIS

The issue on appeal is whether the Petitioner may seek classification as an Amerasian pursuant to the AHA, Public Law 100-202, through the filing of a Form I-360 Petition. The Petitioner asserts that he may file Form I-360 seeking classification as an Amerasian through his mother, the mother of his half-sister, who was fathered by a U.S. Citizen. The Petitioner claims that he meets the requirements of the AHA, regardless of his current age, because he was the unmarried child, under 21 years of age, of his mother and residing in Vietnam at the time the AHA was enacted. He further states that although the statute requires that an applicant under the AHA must apply for an immigrant visa and depart Vietnam within a certain timeframe, the Petitioner already met those requirements when he obtained an immigrant visa in 1989. The Petitioner claims that USCIS is required to adjudicate an

application under the AHA and that the Director erred in finding that all applications under the AHA must be submitted to the U.S. Department of State.

Section 204(f) of the Act allows certain individuals who were born in one of five Asian countries, including Vietnam, and fathered by a U.S. Citizen to petition for classification as an Amerasian. The regulation implementing section 204(f) of the Act refers only to Amerasian children of U.S. citizens who meet the requirements of Public Law 97-359 and states that such individuals may file a Form I-360, Petition for Amerasian, and must file the petition in accordance with the form instructions. *See* 8 C.F.R. § 204.4. The I-360 Form Instructions do not indicate that an individual seeking classification as an Amerasian under the AHA may file the Form I-360, but rather specify that in order to seek classification as an Amerasian by filing the Form I-360, and individual must be fathered by a U.S. Citizen and otherwise meet the requirements of Public Law 97-359. In addition, as noted by the Director, the AHA allows eligible individuals who are residing in Vietnam to obtain an immigrant visa and admission as an immigrant, but does not provide that they may obtain status by filing a petition while residing in the United States. *See also* 9 FAM 502.2-4(C) (previous location 9 FAM 42.24) (stating that no petition is required for Vietnamese Amerasian children under Public Law 100-102).

The Petitioner does not dispute his ineligibility for classification as an Amerasian under Public Law 97-359 and section 204(f) of the Act as an individual fathered by a U.S. Citizen. We therefore find that he is ineligible to seek classification as an Amerasian through the filing of a Form I-360 petition.

IV. CONCLUSION

The Petitioner has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of N-X-T-*, ID# 17046 (AAO July 20, 2016)