U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26158803

Date: JUN. 22, 2023

Appeal of Nebraska Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (G-4 International Organization Employee Family Member)

The Petitioner, a citizen of Ghana, seeks classification as a special immigrant unmarried son or daughter of an international organization employee under section 203(b)(4) – "Certain Special Immigrants" – and section 101(a)(27)(I)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1153(b)(4) and 1101(a)(27)(I)(i). This employment-based immigrant classification allows the son or daughter of a current or former employee of an international organization located in the United States to petition for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner was ineligible for the immigrant classification because they did not file the petition before their 25th birthday. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

The type of special immigrant status sought by the Petitioner is defined in section 101(a)(27)(I)(i) of the Act, 8 U.S.C. § 1101(a)(27)(I)(i), as follows:

> [A]n immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph 14(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph 15(g)(iv) or paragraph 15(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later.

So the plain language of the statute states that a petition under this section must be filed before a petitioner's twenty-fifth birthday.

The Petitioner celebrated their twenty-fifth birthday on [redacted] 2020. Almost one year later, on June 17, 2021, the Petitioner filed this petition. Because the Petitioner did not file before their twenty-fifth birthday, the Director correctly denied the petition.

The Petitioner advances an alternate interpretation of the statute based on the common custom to state one's age relating to their last celebrated birthday. They argue that the statutory requirement to file "no later than [their] 25th birthday" renders a petitioner eligible to file their petition for the entire period between their twenty-fifth and twenty-sixth birthday. If the Petitioner's preferred interpretation was followed, the Petitioner here would be eligible to file their petition because they filed this petition on June 17, 2021, which is before their twenty-sixth birthday. So they argue that that the statute permits them or any petitioner to file this petition so long as they are not over twenty-six years of age.

The Petitioner is mistaken because their preferred interpretation runs contrary to the plain language of the statute. Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

We are expected to give the words used their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. And Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

In drafting the Act, Congress clearly indicated that they intended section 101(a)(27)(I)(i)(II) to require a petitioner file the petition before their twenty-fifth birthday. The statue imposes a deadline of "no later than [the petitioner's] 25th birthday…" In drafting this section, Congress clearly indicated that a petitioner's eligibility to properly file an application under this section would end the day after their twenty-fifth birthday. Congress intended for a petitioner's twenty-fifth birthday to serve as a deadline for filing the petition.

Further support for the statutory intent of Congress is demonstrated in the immediately preceding paragraph relating to examining the residency requirements for eligibility under this section. Congress used the phrase "between the ages of five and 21 years" as opposed to requiring that a petitioner meet the requirements before their twenty-first birthday. In the case of calculating residence, Congress eschewed a deadline by not specifically referencing a "birthday."

Other sections of the Act contain language that clearly states an individual's birthday as integral to a definition or deadline. For example, section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), defines the term "child" as "an unmarried person under twenty-one years of age…" Thus, Congress designated

an individual's twenty-first birthday as the date that they no longer met the definition of child under section 101(b)(1) of the Act. It follows that Congress was aware of the possibility of structuring section 101(a)(27)(I)(i)(II) similar to the preceding section 101(a)(27)(I)(i)(I) to permit a petitioner to file anytime during their twenty-fifth year but did not do so.

The record reflects and the Petitioner concedes that they did not file the petition prior to their twenty-fifth birthday. The petition was therefore unapprovable and the Director correctly denied it.

ORDER: The appeal is dismissed.