U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25982981

Date: APR. 14, 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 Malaysia, seeks classification as a special immigrant unmarried son or daughter of an international organization employee under section 203(b)(4) – "Certain Special Immigrant" – 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 record did not establish that the Petitioner was resident and physically present in the United States for the minimum time periods prescribed in the Act, and thus was not eligible for the immigration benefit sought. 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.

I. LAW

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.

Thus, to succeed the Petitioner must, while in G-4 nonimmigrant status, have been resident and physically present in the United States:

- For at last half of the seven years preceding the filing of the petition, and;
- At least seven years between the ages of 5 and 21.

The regulation at 8 C.F.R. § 101.5(c) provides further clarification of the residence and physical presence requirements to demonstrate eligibility for classification as an immigrant under section 101(a)(27)(I)(i) of the Act. It states that absences by unmarried sons and daughters while enrolled in a school outside the United States do not count towards the physical presence requirement. But absences from the United States without the principle G-4 nonimmigrant shall not be subtracted from the aggregate period of residence and physical presence so long as the absence is recognized by the international organization employer of the principle G-4 nonimmigrant as customary leave. And, provided residence in the United States is maintained and the duty station of the principle G-4 nonimmigrant continues to be in the United States, absences from the United States with the principle G-4 nonimmigrant will not be subtracted from the aggregated period of required residence or physical presence for unmarried sons or daughter of the G-4 nonimmigrant international organization employee.

II. ANALYSIS

Subsequent to the filing of the Forms I-360 and I-485, the Director issued a request for evidence (RFE) to demonstrate that the Petitioner was resident and physically present in the United States for (1) periods totaling at least one-half of the seven years before the date of application for a visa or adjustment of status and (2) for a period or periods aggregating at least seven years between the ages of five and 21 years.[1] In response, the Petitioner submitted a number of supporting documents including their unsworn statement supported by copies of electronic correspondence exchanged between the principle G-4 nonimmigrant parent and their international organization employer reflecting approved customary leave.[2] On appeal, the Petitioner submits substantially the same supporting statement and documentation.

We conclude that the Director was correct that the Petitioner has not demonstrated that they were resident and physically present in the United States for (1) periods totaling at least one-half of the seven years before the date of application for a visa or adjustment of status and (2) for a period or periods aggregating at least seven years between the ages of five and 21 years for the following reasons.

[1] The Petitioner filed the Form I-360 and concurrent Form I-485 in this matter on September 2, 2021, which was before the Petitioner's 25th birthday.

[2] While we may not list and discuss every document submitted, we have reviewed and considered each one.

1. Residence and Physical Presence in the United States for One-Half of the Seven-Years Period Preceding the Filing of Forms I-360 and I-485.

The Petitioner cannot demonstrate that they were resident and physically present in the United States for one-half of the seven years preceding their filing of the Form I-360 and Form I-485. The applicable seven-year period commenced on September 2, 2014, seven years prior to the date the Petitioner filed their Forms I-360 and I-485. Any residence and physical presence before September 2, 2014 is irrelevant.

On appeal, the Petitioner contends that they have an affinity for the United States. They present documentary proof of availability of a family residence and school records showing that they matriculated from a public high school in the United States. They also provide evidence of trips to the United States after absences for education and personal reasons to support that they have never abandoned their residence in the United States despite their absences.

But residence is not enough. The statute and regulations require concurrent physical presence in the United States for the requisite time periods. And the regulations permit residence and physical presence to endure uninterrupted during absence from the United States only under very specific conditions.

The record reflects that in the seven-year period between September 2, 2014 and September 2, 2021 the Petitioner was absent from the United States primarily for two purposes: to attend school outside the United States and to accompany their principle G-4 nonimmigrant parent on customary leave authorized by the international organization employer. The Petitioners absences for the purpose of attending school are clear in the record, and those absences do not count towards the residence and physical presence requirements.

The question of whether the Petitioner accrued the requisite physical presence in the United States during their absences from the United States turns on whether the following periods of absence from the United States without their principle G-4 nonimmigrant parent were "customary leave as recognized by" their parent's international organization employer. Those periods of time were (1) June 20, 2019 to July 26, 2019, (2) May 5, 2017 to July 27, 2017, (3) September 1, 2017 to May 27, 2018, (4) June 18, 2015 to July 14, 2015, and (5) August 6, 2015 to August 25, 2015.

Whilst the standard of proof in immigration proceedings is by a preponderance of the evidence, the burden to prove by a preponderance of the evidence is the Petitioner's alone. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not provided any material, reliable, or probative evidence to demonstrate by a preponderance of the evidence that the Petitioner's absences during the periods listed above unaccompanied by their principle G-4 nonimmigrant parent were recognized as "customary leave" by their principle G-4 nonimmigrant parent's international organization employer. And if the absence from the United States was not for "customary leave" purposes, then the Petitioner's accrual of physical presence for eligibility under this immigrant category was interrupted. So we are not able to conclude that the Petitioner has the required physical presence for one-half of the seven-year period immediately preceding the filing of the Forms I-360 and I-485.

2. Residence and Physical Presence in the United States for a Period or Periods Aggregating At Least Seven Years Between the Ages of Five and 21 Years.

Even if the Petitioner could have demonstrated that they had the required residence and physical presence in the United States for one-half of seven years preceding filing of the Forms I-360 and I-485, they would still be ineligible for classification as an immigrant under this category under the second condition in section 101(a)(27)(I)(i) of the Act. The Petitioner cannot demonstrate that they were resident and physically present in the United States for a period or periods aggregating at least seven years between the ages of five and 21 years.

The Petitioner commenced their residence in the United States in G-4 nonimmigrant status on April 1, 2012, when they were 14 years, eight months, and 28 days old. The Petitioner was 21 years old until they celebrated their 22nd birthday on [redacted] 2019.[3] So the Petitioner had seven years, four months, and three days within which they could be resident and physically present in the United States for a period or periods aggregating at least seven years.

The record reflects that the Petitioner's absences from the United States in the period between April 1, 2012 and [redacted], 2019 for the purposes of attending school exceeded four months and three days. Time spent outside the United States for the purposes of attending school interrupts a petitioner's physical presence. *See* 8 C.F.R. § 101.5(c). So the Petitioner has not been resident and physically present in the United States for a period or periods aggregating at least seven years between the ages of five and 21 years and is ineligible for classification as an immigrant in this category.

III. CONCLUSION

A petitioner for special immigrant status under sections 203(b)(4) and 101(a)(27)(I)(i) must meet the minimum residence and physical presence requirements specified therein. As the Petitioner did not meet the minimum residence and physical presence requirements, their appeal must be dismissed.

ORDER: The appeal is dismissed.

[3] We have previously found that a petitioner's residence and presence in the United States between the date that they reach age five and the day before they reach 22 years of age may be considered in assessing whether they meet the requirements of section 101(a)(27)(I)(iii) of the Act.