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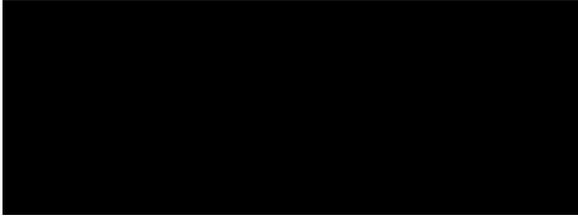
U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services



B9

FILE: [Redacted]  
EAC 03 039 52052

Office: VERMONT SERVICE CENTER

Date:

MAY 26 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

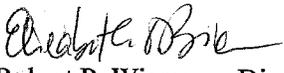
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iv) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Lithuania who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a United States citizen.

The director denied the petition, finding that the petitioner was not the child of a citizen or lawful permanent resident of the United States within two years of filing the Form I-360 petition.

On appeal, counsel for the petitioner asserts that the petitioner is eligible for the classification because she is a stepchild of a United States citizen, and further asserts that the fact that her biological mother divorced her stepfather more than two years prior to the filing of the petition is irrelevant.

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, that an alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

The regulation at 8 C.F.R. § 204.2(e) states, in pertinent part:

*Self-petition by child of abusive citizen or lawful permanent resident—Eligibility.* (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act 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 . . . 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 . . . .

According to the evidence on the record, the petitioner was born in Lithuania on January 1, 1983 of [REDACTED] and [REDACTED]. The evidence indicates that the petitioner's biological mother, [REDACTED] U.S. citizen [REDACTED] in August 24, 1990 in Chicago, Illinois. The evidence further indicates that the petitioner's biological mother divorced her citizen spouse on December 9, 1999.

The issue to be addressed in this proceeding is whether the petitioner is a child of a citizen or lawful permanent resident of the United States as of the date of the filing the instant petition. A petitioner must establish eligibility

as of the date of the filing of the petition. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner filed the Form I-360 on November 14, 2002.

The director determined that since the petitioner's mother and stepfather were divorced on December 9, 1999, no petitionable relationship existed between the petitioner and her citizen stepfather as of the date of the filing of the petition.

The director interpreted the law to require a self-petitioning child's parent to be legally married to the abusive parent within two years of the date of filing the petition. This portion of the director's decision shall be withdrawn. While the AAO concurs that the evidence is insufficient to establish that a petitionable relationship existed between the petitioner and her citizen stepfather as of the date of the filing of the petition, the AAO does not agree that the law provides that a self-petitioning child must establish that his or her parent was legally married to the abusive stepparent within two years of the date of the filing of the petition. On October 28, 2000, the President approved enactment of the *Violence Against Women Act* (VAWA), 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b)(1) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner, claiming to qualify for immigration as the battered spouse of a United States citizen, may still qualify as the spouse of a citizen even if the qualifying marriage was terminated within two years prior to the filing of the petition provided that the petitioner can establish a connection between the legal termination of the marriage and the battering or extreme cruelty by the U.S. citizen spouse. VAWA does not contain a similar provision that children of divorced parents must file within two years of the termination of the marriage.

Counsel for the petitioner asserts that the petitioner's mother's divorce from the United States citizen stepfather did not destroy the "petitionable relationship" between the petitioner and her citizen stepfather because the petitioner became a stepchild before she attained the age of 18 and that at the time of the filing she was still the stepchild of a citizen. Counsel cites *Matter of G*, 8 I&N Dec. 355 (BIA 1959) for the proposition: "once a parent, always a parent." *Matter of G* is distinguishable from the instant case. The respondent in *Matter of G* was an expatriated citizen of the United States who sought re-entry to the United States vis-à-vis his biological/citizen son's petition. Here, the petitioner is seeking an immigrant visa through a stepparent relationship that was legally terminated prior to the filing of the instant petition.

Counsel for the petitioner argues that since the petitioner endured abuse by her citizen stepfather while the stepparent relationship existed, she should not lose the remedy accorded to her under the statute by loss of her relationship to her stepparent. While Congress clearly intended for the scope of the statute to be remedial, it did not redefine "child" as that term has long been defined by statute and precedent decisions. The AAO will not extend the definition of child to include a stepchild of a stepparent whose marriage to the natural parent has terminated in divorce and who does not now enjoy a family relationship with the stepparent.

The appropriate inquiry in cases where there has been a legal separation or where the marriage has been terminated by divorce or death is whether a family relationship has continued to exist as a matter of fact between the stepparent and stepchild and whether the parents had a bona fide marriage. *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981); *Matter of Pagnerre*, 13 I&N Dec. 688 (BIA 1971); and *Matter of Awwal*, 19 I&N Dec. 617 (BIA 1988)(A sham marriage is invalid from its inception and cannot under any circumstances be the basis of a stepparent relationship under section 101(b)(1)(B).)

According to the evidence on the record, the petitioner and her mother arrived in Chicago on July 2, 1990. The petitioner's 37-year old mother wed a 74-year old U.S. citizen in August 1990. Chicago police arrested the petitioner's mother and stepfather for child neglect on January 15, 1992. The police report indicates that the petitioner's stepfather allowed the petitioner to live in an unsanitary rat-infested apartment. A child neglect petition was filed against the petitioner's mother on the charge that she had contributed to the neglect of the petitioner, but the case was stricken with leave to reinstate in November 1992. In November 1994, the Circuit Court of Cook County appointed a neighbor [REDACTED] as the petitioner's guardian ad litem. The

petitioner lived with this neighbor for approximately one year; then, the petitioner went to live with an elderly widow. The petitioner indicated in her statement that she and her mother lived in an apartment separate from her stepfather's apartment, but in the same building that was owned by her stepfather. In review, the record does not establish that a family relationship continued to exist as a matter of fact between the stepparent and stepchild after the petitioner's mother and stepfather divorced. Further, the record does not establish that the petitioner's mother and stepfather had a bona fide marriage.<sup>1</sup>

Beyond the decision of the director, it is unclear whether the petitioner ever resided with her stepfather. It is not established that the petitioner was battered by or subjected to extreme cruelty by her citizen stepparent. For these additional reasons, this petition may not be approved.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> According to CIS records, the petitioner's mother's Form I-751 petition to remove the condition on permanent resident status was denied.