

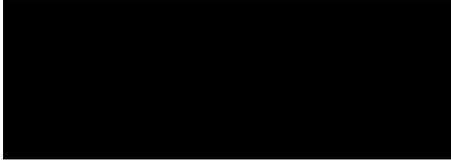
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
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Services

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FILE: 
EAC 02 249 53597

Office: VERMONT SERVICE CENTER

Date: NOV 10 2005

IN RE: Petitioner: 

PETITION: Petition for Special Immigrant Battered Child pursuant to 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.

R.P.W.
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 17-year old native and citizen of Colombia who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a United States citizen. According to the evidence in the record, the petitioner's mother wed her United States citizen spouse on May 19, 2001 in Ft. Lauderdale, Florida. The petitioner filed the instant petition on July 24, 2002. The petition was denied on October 19, 2004.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that the child of an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, may self-petition for immigrant classification if the alien demonstrates to the Secretary of Homeland Security that—

- (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(e)(1)(i) states, in pertinent part, that:

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;

* * *

- (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; and

* * *

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(e)(1)(i) also requires the petitioner to show that she resided with her citizen stepparent.

The director found the petitioner's statement, the only documentation submitted at the time of filing, was insufficient to establish that she has been battered by or subjected to extreme mental cruelty committed by her citizen stepparent, that she resided with her citizen stepparent, and that she is a person of good moral character. Accordingly, the director requested further evidence on November 3, 2003.

As it relates to the petitioner's claim of abuse, the director noted that the petitioner's statement "focus[ed] primarily upon your relationship with your mother," and requested that the petitioner submit evidence such as reports and affidavits from police, judges, court officials or medical personnel, evidence that the petitioner sought refuge in a shelter for the abused, and photographs of injuries. The director also requested a detailed description

of the alleged abuse, such as whether the abuse was verbal or physical, or whether the petitioner was socially isolated.

As it relates to the petitioner's claim that she is a person of good moral character, the director requested an affidavit supported by police clearances from each place the petitioner resided for at least six months during the three-year period prior to filing the petition.

Finally, as it relates to the petitioner's claim that she resided with her citizen stepparent, the director requested evidence such as leases or rental agreements, taxes listing the petitioner as a dependent, school records, medical records, or affidavits from friends and family members which document a shared address.

On January 14, 2004, counsel for the petitioner submitted a letter in response to the director's request for evidence and requested an additional 45 days to respond to the director's request. The director granted the petitioner's request for additional time on April 5, 2004 and indicated that in accordance with the regulation at 8 C.F.R. § 204.1(h), the petitioner had 60 additional days to present additional evidence, to withdraw the petition, or to request a decision based upon the evidence submitted. The director noted that although the petitioner could be afforded additional time to respond, the total time shall not exceed 120 days. On June 9, 2004, counsel for the petitioner submitted a second request for additional time.

No further documentation was submitted after the petitioner's second request for additional time. Accordingly, the director denied the petition, finding that the petitioner failed to establish that she resided with the citizen parent, that she has been battered or the subject of extreme cruelty perpetrated by the citizen parent, and that she is a person of good moral character.

On appeal, counsel for the petitioner indicates that a brief and/or evidence would be submitted to the AAO within 30 days. To date, more than eleven months after the filing of the appeal, the record contains no further submission from the petitioner. We, therefore, consider the record to be complete as it now stands.¹

Based upon the record before the director at the time of her decision, we concur with the director's finding that the petitioner failed to establish that she resided with her citizen stepparent, that she has been battered by or the subject of extreme cruelty perpetrated by her citizen stepparent, and that she is a person of good moral character.

The single piece of evidence contained in the record is the petitioner's statement. In her statement, the petitioner says that she would see her mother crying and that she and her mother began arguing until her mother explained that her citizen stepfather was a homosexual. The petitioner does not describe any incident of physical abuse or extreme cruelty. Although the petitioner claims that her citizen stepfather "was constantly telling [her] to go out with a guy" because her citizen stepfather liked him, such a claim does not establish that the petitioner was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Further, the petitioner's

¹ We note that in instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Therefore, even if the petitioner had submitted additional evidence on appeal, the AAO need not and would not consider the sufficiency of the evidence submitted on appeal.

statement provides no details such as where they lived or how long they lived together to support her claim that she resided with her citizen stepparent. The record contains no school, hospital, or medical records, insurance policies, banking or financial records, or tax documents that show the petitioner lived at the same address as his citizen parent. Finally, the petitioner provides no statement regarding her good moral character or supporting police clearances.

Accordingly, we concur with the director's finding that the petitioner failed to establish that she resided with her citizen stepparent, that she has been battered by or the subject of extreme cruelty perpetrated by her citizen stepparent, and that she is a person of good moral character.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.