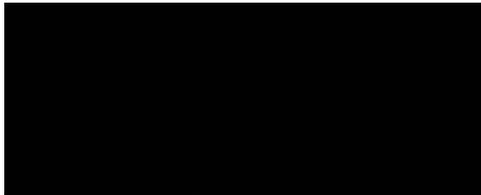


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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE: [REDACTED]
EAC 04 214 53175

Office: VERMONT SERVICE CENTER

Date: **APR 14 2006**

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Child 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Colombia who entered the United States June 24, 1998 as a conditional permanent resident (CR-2), after the approval of a Form I-130 petition filed on his behalf by his stepfather, [REDACTED] a U.S. citizen. On December 21, 2002, the petitioner's conditional resident status was terminated for failure to timely file a petition to remove the conditions on his residency pursuant to section 216(c) of the Act. The petitioner filed his Form I-360 on July 15, 2004 seeking immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), as an alien subjected to battery or extreme cruelty by his U.S. citizen parent. On June 29, 2005, the director denied the petition because the record did not establish that the petitioner was battered or subjected to extreme cruelty by his U.S. citizen stepfather. On appeal, counsel submits a brief and additional documents. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty and find that counsel's claims and the evidence submitted on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Section 204(a)(1)(A)(iv) of the Act states, in pertinent part:

An alien who is the child of a citizen of the United States . . . and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title [section 201(b)(2)(A)(i) of the Act], 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 . . . 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 eligibility requirements for a petition filed under section 204(a)(1)(A)(iv) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part:

- (i) A child may file a self-petition under section 204(a)(1)(A)(iv) . . . of the Act if he or she:
 - (A) Is the child of a citizen . . . of the United States;
 - (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship;

* * *

- (ii) *Parent-child relationship to the abuser.* The self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed and when it is approved. Termination of the abuser's parental rights or a change in legal custody does not alter the self-

petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

Section 101(b)(1) of the Act defines a “child” as, in pertinent part:

an unmarried person under twenty-one years of age who is –

* * *

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred[.]

The corresponding regulation at 8 C.F.R. § 204.2(e)(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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iv) of the Act are contained in the regulation at 8 C.F.R. § 204.2(e)(2), which states, in pertinent part:

Evidence for a child’s self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *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 abuse 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.

In this case, the record shows that the petitioner's mother married his U.S. citizen stepfather on March 28, 1997 when the petitioner was ten years old. The petitioner's mother filed a Form I-360 for immigrant classification pursuant to section 203(a)(1)(A)(iii) as an alien subjected to battery or extreme cruelty by her U.S. citizen husband, and her petition was approved on June 9, 2005. However, the record in this case does not establish that the petitioner himself was subjected to battery or extreme cruelty by his stepfather. The petitioner initially submitted copies of two police reports concerning domestic incidents between his mother and stepfather, only one of which indicates that the petitioner was present. That report, dated March 7, 2004, explains that the petitioner's stepfather was arguing with his mother, but that his mother stated that his stepfather did not strike her and had not struck her in the past. With his Form I-360 and in response to the director's request for additional evidence, the petitioner submitted affidavits from two family friends, his own affidavit and a letter from a counselor. We concur with the director's assessment that these documents do not establish that the petitioner was battered or subjected to extreme cruelty by his stepfather.

On appeal, the petitioner submits affidavits from two additional family friends, his mother and a second affidavit of his own. [REDACTED] a family friend, states that he witnessed a fight in January 2003 during which the petitioner's stepfather tried to slap his mother in the petitioner's presence and hurled "all kind [sic] of scatological epithets [sic]" towards the petitioner and his mother. [REDACTED] another family friend, states that on numerous occasions he observed the petitioner's stepfather humiliate and insult the petitioner's mother in front of the petitioner. Mr. [REDACTED] further explains that on several occasions, the petitioner stayed with him when the petitioner's stepfather forced him out of their apartment. The petitioner's mother states that her son was present during many of the disputes with her husband and that the petitioner often had to intervene when her husband assaulted her. In his second affidavit submitted on appeal, the petitioner states that his stepfather slapped his face and hit him on several occasions and that his stepfather would play with kitchen knives in front of him and his mother, "gesturing, laughing and indicating the possibility of using them against us." These affidavits are unsupported by any documentary evidence of the types listed in the regulation at 8 C.F.R. § 204.2(e)(2)(iv) and the affidavits themselves do not persuasively establish that the petitioner was battered or subjected to extreme cruelty by his stepfather.

On appeal, counsel and the petitioner's mother contend that the petitioner's case should be approved because the self-petition of his mother was approved based on the same familial circumstances. The case of the petitioner's mother is not before us and we cannot determine if the evidence submitted in support of her petition was identical to that submitted in this case or pertinent to the petitioner's own claim. Regardless, we note that the petitioner was unmarried and under the age of 21 when his mother's Form I-360 was filed. Accordingly, he qualifies for derivative status pursuant to the regulation at 8 C.F.R. § 204.2(c)(4). Derivative beneficiaries of petitions filed under section 204(a)(1)(A)(iii) need not show that they were subjected to battery or extreme cruelty. If the petitioner's mother included her son on her Form I-360 or later requested a derivative beneficiary notice

from CIS, the petitioner is eligible to file a Form I-485 application to adjust status and is protected from “aging out” when he turns 21 pursuant to section 204(a)(1)(D)(III) of the Act.

The record in this case does not establish that the petitioner was battered or subjected to extreme cruelty by his U.S. citizen stepfather pursuant to the regulations at 8 C.F.R. §§ 204.2(e)(1)(vi), 204.2(e)(2)(iv). He is thus ineligible for classification under section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(e)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

The case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(e)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner , is to be certified to the Administrative Appeals Office for review.