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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [Redacted]  
EAC 05 056 53191

Office: VERMONT SERVICE CENTER

Date: **JUL 24 2008**

IN RE: Petitioner: [Redacted]

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:

SELF-REPRESENTED

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, Chief  
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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner is a native and citizen of Kenya 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 father wed United States citizen [REDACTED] on August 31, 2001 in Cobb County, Georgia. The petitioner filed the instant petition on December 17, 2004. The director denied the petition on December 6, 2005 finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his citizen stepparent and that he is a person of good moral character.

The petitioner submits a timely appeal with additional evidence.

Section 204(a)(1)(A)(iv) 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 he 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).

As evidence to establish his claim of abuse, the petitioner submits his own personal statement, an affidavit from his father and an affidavit from an acquaintance. The petitioner claims that his stepmother looked at him "strangely, coldly, and unwelcomingly," that she would not let the petitioner touch anything in the house, and discriminated against the petitioner in favor of his stepsiblings. The petitioner also claims that his stepmother would make derogatory remarks about his mother and called the petitioner names.

The petitioner's father states that his spouse "became very cold to [the petitioner] using very derogatory words when referring to him, his mother and country, openly discriminating against him by favoring her own children...." The petitioner's father also describes an incident over the Christmas holidays when the petitioner

wanted to end his visit early because the petitioner's stepmother quarreled with the petitioner's father "practically every night, shouting obscenities and calling me [and the petitioner] all sort of names."

The affidavit from [REDACTED] a friend of the petitioner's father, indicates that the petitioner told [REDACTED] that he was "mistreated" by his stepmother and that she called him names. [REDACTED] then states that the petitioner's father told him that he sent the petitioner to live with his sister because of the continual harassment the petitioner endured at the hands of his stepmother. It is noted that [REDACTED] does not indicate that he was a witness to any of the claimed abuse but rather was informed of the claims secondhand by the petitioner and his father.

The director found this evidence insufficient to establish the petitioner's claim that he was battered by or subjected to extreme cruelty by his citizen stepparent. Upon review, we concur with this finding. First, we note that the petitioner makes no claim that he was battered or physically abused by his citizen stepparent. Second, we find the general statements contained in the affidavits, such as being called names, do not meet the description of extreme cruelty as contained in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

As it relates to the petitioner's claim that he is a person of good moral character, at the time of the director's decision the record contained a letter from the Minnesota District Court, Second Judicial District, indicating that no records were found for the petitioner and various letters and certificates from the petitioner's school and church. The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner's good moral character is *an affidavit from the petitioner accompanied by a police clearance from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition*. Despite the director's specific request for the evidence required by regulation, the petitioner failed to submit an affidavit regarding his good moral character and an additional police clearance from Kenya. Accordingly, we concur with the finding of the director that the record does not contain sufficient evidence to establish that the petitioner is a person of good moral character.

On appeal, the petitioner submits a police clearance from Kenya which indicates that the petitioner has no criminal record.<sup>1</sup> It is noted 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 does not usually accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents at the time of filing or 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). In this instance, however, because the petitioner was not provided with the NOID required by regulation, we have reviewed the petitioner's appellate submission in order to determine whether such evidence overcomes the director's stated grounds for denial and could be sustained without remanding to the director for further action. Although the certificate from the Criminal Investigation Department in Kenya does overcome the director's finding regarding the petitioner's failure to submit a clearance from all places he resided during the three-year period prior to filing, the record continues to remain absent an affidavit from the petitioner regarding his good moral character. Accordingly, the petitioner's appellate submission does not overcome the director's finding that the petitioner has failed to establish that he is a person of good moral character.

Despite our support of the director's findings however, the director's decision cannot stand because of the director's failure to issue a Notice of Intent to Deny to the petitioner prior the issuance of the denial.

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<sup>1</sup> Although the petitioner also requests a sixty-day extension in order to find an attorney to prepare a brief or provide additional evidence, to date, nearly five months later, no further submission has been received.

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) 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.

Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.