



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 04 136 50212

Office: VERMONT SERVICE CENTER

Date: JUN 07 2006

IN RE:

Petitioner:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 petitioner filed her Form I-360 petition on March 31, 2004.

The director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character.

The petitioner filed a timely appeal.

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 Columbia on August 5, 1990 of [REDACTED] and [REDACTED]. The evidence indicates that the petitioner's mother wed [REDACTED] on September 11, 1990 and divorced on December 11, 2001. The petitioner's mother wed [REDACTED] 12 years her junior, on December 26, 2001. The evidence in the record indicates that the petitioner's mother initiated divorce proceedings against her U.S. citizen spouse.

The first issue to be addressed in this proceeding is whether the petitioner established that she is a person of good moral character.

The petitioner submitted the following evidence:

- A copy of her employment authorization card.
- A copy of her social security card.
- Her mother's marriage certificate indicating that her mother, [REDACTED] wed United States citizen [REDACTED] on December 26, 2001 in New York City.
- The petitioner's stepfather's birth certificate.
- A copy of a Form I-797C indicating that the petitioner's stepfather filed a Form I-130 petition on the petitioner's behalf on April 10, 2003.
- A notice instructing the petitioner to schedule a biometrics appointment in connection with her pending Form I-485 application for residence.

Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, on November 16, 2004, the director issued a notice requesting the petitioner to submit evidence (RFE), including her birth certificate and evidence to demonstrate that she had lived with her stepfather and that she had been the subject of battery or extreme mental cruelty committed by her stepfather. The director asked the petitioner to submit proof of the legal termination of the marriage(s) of her mother and any of her previous spouses. The director asked the petitioner if her mother and stepfather were still married. The director asked the petitioner to submit evidence of her good moral character.

On January 19, 2005, the petitioner submitted additional evidence. It is noted that she failed to respond to the director's question regarding the status of her mother and stepfather's marriage.

On August 4, 2005, the director denied the petition because the record failed to establish that the petitioner is a person of good moral character.

On appeal, counsel for the petitioner stated that the petitioner had tried to obtain a police clearance but that the New York Police Department informed her that they could not supply any data about individuals who are under the age of 16. Counsel further indicated that he would submit a brief and/or evidence within 30 days of filing the appeal. Over than seven months have lapsed and the petitioner failed to submit additional evidence. This office facsimiled the petitioner's counsel to request whether he had filed a brief and/or additional evidence. Counsel failed to respond to the facsimile.

In an RFE, the director informed the petitioner that she could submit the following:

1. Her own affidavit supported by police clearances or records from each place she resided for at least 6 months during the 3-year period before filing the petition.
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support [her] affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to [her] good moral character.

On appeal, counsel for the petitioner states that the petitioner tried to obtain a clearance from the New York Police Department but that they refused, saying they could not provide information regarding individuals under the age of 16. Counsel failed to indicate why the petitioner did not submit affidavits to establish her good moral character. The evidence is insufficient to establish that the petitioner is a person of good moral character.

We concur with the director's determination that the petitioner failed to establish that she is a person of good moral character. Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

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-petition, 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.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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

On remand, the director should further inquire as to whether the petitioner has a qualifying relationship as the child of a citizen or lawful permanent resident of the United States and is eligible for immigrant classification based on a qualifying relationship with a U.S. citizen. According to the evidence in the record, the petitioner's mother initiated divorce proceedings from the U.S. citizen spouse. Although asked in the director's RFE whether the petitioner's mother was still married to the U.S. citizen, the petitioner failed to respond.

On remand, the director should also inquire as to whether the petitioner has resided with her citizen stepfather and has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen during the qualifying relationship. The petitioner submitted a partial copy of a sub-lease, but as it is incomplete and unsigned, it has little evidentiary value. The record contains an illegible police report. The petitioner failed to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her stepfather.

As always in these proceedings, the burden of proof rests solely 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 this decision.