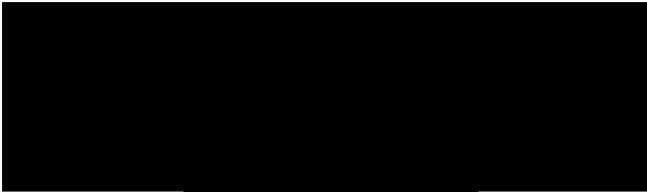




U.S. Citizenship
and Immigration
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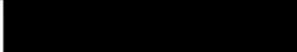
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PUBLIC COPY



By

FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 24 2006

EAC 04 115 54228

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, Director
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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 seeks 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 an alien subjected to battery or extreme cruelty by his United States citizen parent. The petitioner was admitted to the United States as a nonimmigrant visitor (B-2) on August 6, 1999. On July 24, 2003, the petitioner was served with a Notice to Appear and placed in removal proceedings pursuant to section 237(a)(1)(B) of the Act. The petitioner filed his Form I-360 on March 8, 2004.

Because the petitioner submitted no supporting documents with his Form I-360, the director issued a notice on October 12, 2004 requesting the petitioner to submit evidence that he was subjected to battery or extreme cruelty by his U.S. citizen parent, that he resided with his U.S. citizen parent, and that he was a person of good moral character. On December 22, 2004, the petitioner submitted additional documents, none of which complied with the director's specific requests. Accordingly, the director denied the petition on February 9, 2005 because the record failed to establish that the petitioner was subjected to battery or extreme cruelty by his U.S. citizen stepfather, that he resided with his stepfather and that he was a person of good moral character.

Counsel filed an appeal on March 9, 2005. On the Form I-290B, counsel asserts that the director's decision was arbitrary and capricious, was against the weight of the evidence and contrary to the regulations and the law. Counsel does not identify any specific errors of law or fact in the director's decision. On the Form I-290B, counsel indicated that she would send a brief and/or evidence to the AAO within 30 days. Counsel dated the appeal March 7, 2005. To date, over one year later, the AAO has received nothing further from counsel. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish that he was subjected to battery or extreme cruelty by his U.S. citizen stepfather, that he resided with his stepfather and that he is a person of good moral character. Counsel's indiscriminate assertions on appeal do not overcome these reasons 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 . . . under this subparagraph for classification of the alien . . . under such section if the alien demonstrates . . . that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. . . .

The corresponding regulation at 8 C.F.R. § 204.2(e)(1)(vi) explicates the battery or extreme cruelty requirement and states:

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 are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in the foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of good moral character.

In this case, the record shows that the petitioner's mother married [REDACTED] a U.S. citizen, on February 23, 2002 in Rhode Island. The petitioner was 15 years old when his mother married his stepfather. The petitioner submitted no supporting documents with his Form I-360. In response to the director's October 12, 2004 notice, the petitioner submitted the following documents:

- 1) a copy of a bank account statement dated October 31, 2004 and addressed to the petitioner at [REDACTED] Rhode Island 02863;
- 2) a letter from Central Falls High School in Central Falls, Rhode Island dated November 23, 2004 and verifying that the petitioner enrolled on August 31, 1999, withdrew on May 20, 2004 and returned on September 7, 2004 and that he "resided at [REDACTED] with his mother;"
- 3) two illegible photocopies of what appears to be the petitioner's Rhode Island identification card.

Although the marriage license and certificate of the petitioner's mother and stepfather lists their address as [REDACTED] Central Falls, Rhode Island 02863, the record contains no evidence that the petitioner lived with his stepfather at this address. The bank account statement contains only the petitioner's name and lists his residence in [REDACTED] rather than Central Falls, Rhode Island. In addition, the letter from the petitioner's school states that he lived at the [REDACTED] address with his mother and does not mention his stepfather. Accordingly, the present record does not demonstrate that the petitioner resided with his U.S. citizen stepfather as required by section 204(a)(1)(A)(iv) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(e)(2)(iii).

The petitioner submitted no evidence that he was battered or subjected to extreme cruelty by his stepfather during their joint residence or that he is a person of good moral character, as required by section 204(a)(1)(A)(iv) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(e)(1)(vi), 204.2(e)(2)(iv), 204.2(e)(2)(v).

On appeal, the petitioner submits no affidavit to support his claims or explain why the evidence requested by the director was unavailable or unobtainable. Accordingly, the present record does not establish that the petitioner was subjected to battery or extreme cruelty by his U.S. citizen stepfather, resided with his stepfather or is a person of good moral character and the petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act.

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(c)(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(c)(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 this decision.