U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 27 2005
EAC 03 126 53773

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Battered Spouse pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

for 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a 14-year old native of Vietnam 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.[1] According to the evidence on the record, the petitioner's mother wed her United States citizen spouse on May 29, 2002 in San Jose, California. The petitioner claims that she and her mother resided with her mother's citizen spouse from May 2002 until December 2002. The petitioner filed the instant petition on March 14, 2003. In a decision dated September 30, 2004, the director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character.

The petitioner 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 Attorney General 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;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided . . . with the citizen or lawful permanent resident parent;

[1] We note that although the district director indicated the petitioner was represented by counsel, the record contains no Form G-28 reflecting that the petitioner is represented by counsel or any other authorized representative. The record reflects that the petitioner's mother is represented by counsel, however, there is no evidence of a signed Form G-28 on the petitioner's behalf. Accordingly, we consider the petitioner to be self-represented in this matter.

> (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
>
> (G) Is a person whose deportation would result in extreme hardship to himself or herself.

The regulation at 8 C.F.R. § 204.2(e)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character.

Further, the regulation at 8 C.F.R. § 204.2(e)(2)(v) states:

> *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 . . . *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.*

[Emphasis added.]

The director denied the petition based upon a finding that the petitioner had failed to submit the required police clearances.

Given that the petitioner was under the age of 14 at the time the petition was filed, we find the director's request for a police clearance and subsequent denial based on the lack of a police clearance to be in error. The regulation clearly indicates that a self-petitioner who is under 14 years of age is presumed to have good moral character and is not required to submit a police clearance or any other evidence of good moral character. We, therefore, withdraw the director's finding on this issue.

Although we withdraw the director's only stated ground for denial, we find there is an additional issue that needs to be addressed regarding the petitioner's eligibility. The regulation at 8 C.F.R. § 204.2(e)(1)(i)(D) requires the petitioner to show that she has resided with the citizen parent.

On the Form I-360, the petitioner indicates that she lived with her citizen parent from May 2002 until December 2002. To support this claim, the petitioner submits a copy of a lease which reflects that she, her mother, and her citizen parent attempted to rent an apartment beginning June 1, 2002. The lease has not been signed by the petitioner's mother, her citizen parent, or the apartment manager. The record does contain a letter purportedly written by the apartment manager to verify that the petitioner, her mother, and citizen parent "are still rented," however, the letter does not indicate when the lease began or how long they resided in the apartment.

The record contains a second lease, dated November 27, 2002, reflecting the petitioner, her mother, and her citizen parent rented an apartment for the period beginning December 2, 2002. However, given the petitioner's statement that she stopped residing with her citizen parent in December 2002, this lease is of little evidentiary value in establishing that the petitioner resided with her citizen parent.

On appeal, the petitioner's uncle submits a letter which states, "they were living with us . . . for 2 weeks." This single statement, without any other documentary evidence to establish that the petitioner resided with her citizen parent for the period of time claimed, is insufficient to demonstrate eligibility.

As detailed above, the director's stated grounds for denial are erroneous. While the record, at this point, does not fully support a finding of eligibility, the director's decision did not adequately provide the petitioner with an opportunity to remedy the deficiencies in the record. Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 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.