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

B9

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FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 20 2007

IN RE:

Petitioner:



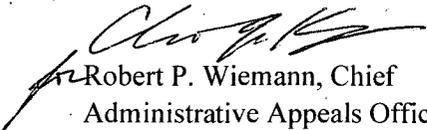
PETITION: Petition for Immigrant Battered Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

ON BEHALF OF PETITIONER:

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 Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien battered or subjected to extreme cruelty by his United States citizen stepparent.

The director denied the petition finding that the petitioner failed to establish that he resided with his citizen stepparent and that he was battered or subjected to extreme cruelty by his citizen stepparent.

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

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) of the Act], and who resides, or has resided in the past, with the citizen parent may file a petition with the [Secretary of Homeland Security] under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the [Secretary of Homeland Security] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

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:

(v) *Residence* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the past.

(vi) *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 . . . 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 guidelines for a self-petition under section 204(a)(1)(A)(iv) of the Act are further explicated 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, 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.

* * *

According to the evidence contained in the record, the petitioner was born in Russia on October 19, 1987. The petitioner entered the United States on January 12, 2003, as a conditional resident through his mother's marriage to G-F-¹, a United States citizen. The petitioner's mother and G-F were married on January 16, 2002 in New York. On February 2, 2005, the petitioner filed this Form I-360. The director subsequently issued two Requests for Evidence (RFE) on June 1, 2005 and September 30, 2005, respectively, for further evidence to establish, *inter alia*, that the petitioner resided with his citizen stepparent and that he was battered or subjected to extreme cruelty by his

¹ Name withheld to protect individual's identity.

stepparent. The petitioner failed to respond to the RFEs and the director issued a Notice of Intent to Deny (NOID) on June 29, 2006, informing the petitioner that he had failed to establish his claim of abuse and that he resided with his citizen stepparent. The petitioner, however, failed to respond to the director's NOID and the director denied the petition on October 30, 2006 based on the grounds cited in the NOID. The petitioner submitted a timely appeal with additional evidence.

On appeal, the petitioner claims that the director did not consider all of the evidence in the record and also submits additional evidence. We note that in instances such as this one, where a petitioner has been put on notice of the deficiencies in the evidence and has been given ample opportunity to respond to those deficiencies, the AAO will not accept evidence offered for the first time on appeal. In this instance, on appeal, the petitioner claims that he sent the requested evidence to his attorney on two occasions. Although a review of the record does not establish that the petitioner has ever been represented by counsel in these proceedings, we have nonetheless considered the additional evidence submitted by the petitioner on appeal. As will be discussed, the petitioner's statements and the additional evidence submitted on appeal are insufficient to overcome the findings of the director and to establish the petitioner's eligibility.

Residence

On the Form I-360 the petitioner indicated that he resided with his citizen stepparent from January 2003 until June 2004 and that he last resided with him at [REDACTED] in Corona, New York. The petitioner submitted no testimonial or documentary evidence to support his claim of residence. Although the petitioner did submit a personal statement, the statement did not provide any specific details regarding his residence with his stepparent such as a description of their residence or of their general daily or weekly schedules, routines, and activities.

The evidence submitted on appeal consists of two ConEdison utility bills and a bank statement from [REDACTED]. The bills and bank statement, however, only list the petitioner's name and his mother's name, they do not contain the petitioner's stepfather's name. Moreover, the bank statement covers the period beginning August 2004, two months *after* the petitioner indicated he no longer resided with his citizen stepparent. As such, while the evidence confirms that the petitioner resided at the claimed address with his mother, the petitioner has failed to establish that he resided with his citizen stepfather as required by section 204(a)(1)(A)(iv) of the Act.

Battery or Extreme Cruelty

In the statement submitted at the time of filing, the petitioner claims that his stepfather drank alcohol and offered the petitioner drugs. The petitioner also states his belief that his stepfather stole money from the petitioner's wallet. The petitioner claims that his mother was depressed as a result of his stepfather's behavior, that she started to yell at the petitioner, and that there was "fighting and yelling" between his mother and stepfather. The petitioner, however, makes no claim that he was ever physically threatened or harmed by his stepfather or that he was subjected to any verbal or mental abuse other than being yelled at by his mother.

On appeal, the petitioner reiterates his previous claim that his stepfather was "drug addicted" and that his mother was depressed because of his stepfather's behavior. The petitioner further states that although he was never physically abused by his stepfather, that he was "morally abused" by being offered drugs and told, "it is o.k. to skip school or even drop out." Although the petitioner claims that he was "scared" of his stepfather, that he lived in "constant fear" of him and was scarred by his "mental abuse," the petitioner contradictorily states that his stepfather's behavior "did not affect [him]." The petitioner does not describe any incident in detail and fails to provide specific descriptions of his stepfather's actions toward the petitioner. The general claims made by the petitioner in his statements do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(e)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The petitioner's stepfather's behavior does not appear to have been part of an overall pattern of violence against the petitioner. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his stepfather, as required by section 204(a)(1)(A)(iv) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.