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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 07 2010

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien child battered or subjected to extreme cruelty by her mother, who was formerly a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that because the petition was filed after the petitioner reached the age of 21, she had failed to establish the existence of a qualifying parent-child relationship with a lawful permanent resident of the United States. On appeal, counsel submits a brief argument on the Form I-290, Notice of Appeal or Motion.

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part, the following:

> An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the last 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien 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] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

In 2005, Congress amended the self-petitioning provisions for abused children to extend eligibility to individuals who failed to file before turning 21 due to the abuse. Section 204(a)(1)(D)(v) of the Act states, in pertinent, the following:

> For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. . . .

Section 204(a)(1)(J) of the Act further states:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 regulation at 8 C.F.R. § 204.2(e)(2)(i) states the following:

> 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.

The petitioner is a citizen of Trinidad and Tobago who was born in that country on November 4, 1981. She entered the United States in B-1/B-2 visitor status on September 2, 1983. Her mother, who was formerly a lawful permanent resident of the United States, was ordered removed from the United States on June 22, 2005 and is therefore no longer a lawful permanent resident.

The petitioner filed the instant Form I-360 on August 4, 2009, when she was 28 years old. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on January 21, 2010. In his decision denying the petition, the director, citing to 8 C.F.R. § 204.2(e)(1)(ii), stated that because the petitioner was over the age of 21 at the time she filed the petition, it could not be approved. The director found further that the petitioner had failed to establish that her mother subjected her to battery or extreme cruelty and that she had resided with her mother.

On appeal, counsel notes section 204(a)(1)(D)(v) of the Act and its provision for the filing of a Form I-360 until the self-petitioner attains the age of 25 years, if the individual shows that the abuse was at least one central reason for the filing delay. Counsel also invokes the Child Status Protection Act (CSPA) of 2002.[1] According to counsel, these two provisions of law permit approval of the instant petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO withdraws the director's analysis, but not his final determination, regarding the petitioner's failure to establish her eligibility for immigrant classification based upon a qualifying relationship with a lawful permanent resident of the United States.

As noted previously, the director cited 8 C.F.R. § 204.2(e)(1)(ii) in support of his decision to deny this petition. The AAO withdraws that analysis, as it was erroneous. As noted, section 204(a)(1)(D)(v) of the Act allows for continued eligibility for certain individuals to file a self-petition as a child after attaining age 21, but before attaining age 25, if the individual demonstrates that the abuse was at

[1] Child Status Protection Act, P.L. 107-278, 116 Stat. 927 (2002).

least one central reason for the filing delay. However, section 204(a)(1)(D)(v) of the Act provides no relief to the petitioner, as she was over the age of 25 at the time the petition was filed.

Nor does counsel's citation to the CSPA provide any basis upon which to approve the petition. Counsel cites no specific provision of the CSPA to support his claim. While the CSPA does provide "age-out" protection to certain child self-petitioners, none of its provisions mandate approval of this case. *See* sections 201(f)(4), 203(h)(4), 204(a)(1)(D) of the Act, 8 U.S.C. §§ 1151(f)(4), 1153(h)(4), 1154(a)(1)(D). Specifically, section 204(a)(1)(D)(i)(I) of the Act states the following:

> Any child who attains 21 years of age who has filed a petition under clause (iv) of section 204(a)(1)(A) or section 204(a)(1)(B)(iii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of section 204(a)(1)(A) or section 204(a)(1)(B)(iii). No new petition shall be required to be filed

As the instant petition was not filed before the petitioner reached the age of 21, the CSPA affords her no relief.

On appeal, counsel does not address the additional grounds for denial and we concur with the director's determination that the petitioner has failed to establish her mother's battery or extreme cruelty and residence with her mother, as required by section 204(a)(1)(B)(iii) of the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act and the appeal will be dismissed.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.