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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]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 30 2010

IN RE: Petitioner: [redacted]

PETITION: Petition for Immigrant Abused 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:

[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.

Thank you.

Perry Rhew
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 sustained. The petition will be approved.

The petitioner seeks immigrant classification 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 battered or subjected to extreme cruelty by his United States citizen parent.

Section 204(a)(1)(A)(iv) of the Act provides that 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, and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General (now 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 citizen parent.

The director determined that the petitioner had not established that the battery or extreme cruelty was one central reason for the petitioner's failure to file the petition before turning 21.

On appeal, counsel for the petitioner asserts that the petitioner has submitted evidence that the extreme cruelty suffered by the petitioner at the hands of his father was one central reason for the delay in filing the petition.

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines a child as, in pertinent part:

> an unmarried person under 21 years of age who is . . . (A) a child born in wedlock

Section 204(a)(1)(D)(v) of the Act provides a late-filing waiver for individuals meeting the following requirements:

> 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 states, in pertinent part:

> 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) further states:

> 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a citizen of the Republic of Cote D'Ivoire (Ivory Coast) who was born on August 24, 1983. His U.S. citizen father filed a Form I-130, Petition for Alien Relative, on January 15, 2002 and the petitioner entered the United States on a K-4 visa on August 12, 2002. Upon entry into the United States, the petitioner resided with his U.S. citizen father and continued to reside with his father until March 2004. At the time the petitioner's U.S. citizen father told him he had to leave his house, the petitioner was twenty years old. On May 17, 2004, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, using his father's address even though it was two months subsequent to his U.S. citizen father asking him to leave his house. The Form I-130 and the Form I-485 were denied on December 29, 2005. Although the petitioner informed United States Citizenship and Immigration Services (USCIS) of his changes of address, the denial of both the Form I-130 and Form I-485 were sent to the petitioner's U.S. citizen father's address. The petitioner states that he did not learn of the denial of the Form I-130 or the Form I-485 until May 2006 when he appeared at a scheduled Infopass appointment in New York with USCIS. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on August 11, 2008, two weeks prior to his twenty-fifth birthday.

As noted above, the director denied the petition based on the petitioner's failure to establish that his delay in filing the Form I-360 was in direct relationship to the abuse perpetrated by his U.S. citizen father and that the abuse was at least one central reason for the filing delay.

On appeal, counsel asserts that the petitioner failed to file the Form I-360 when he was living with the abuser and lacked access to any resources to learn of his eligibility to file a Form I-360. Counsel also asserts that the petitioner did not learn of the denial of his Form I-485 until May 2006 and again did not have resources to learn of his eligibility to file for relief as an abused child of a U.S. citizen.

On the Form I-360, the petitioner stated that he ceased living with his U.S. citizen father on March 30, 2004. In his August 4, 2008 statement, the petitioner indicates that when he made an Infopass appointment to find out about his case in mid-2006, he learned that his Form I-485 had been denied. The petitioner indicated further that some time after that his father asked to see him and promised that he would re-file his immigration case but after the petitioner retained a lawyer his father failed to keep the appointment and the petitioner realized he had to shut his father out of his life.

While the abuse need not be the predominant cause of the filing delay, it must be "at least one central reason" for the delay. *See* Section 204(a)(1)(D)(v) of the Act. Upon review of the record in this matter, the petitioner's father retained control over the petitioner's immigration status when the petitioner turned 21, the relevant period for determining eligibility under Section 204(a)(1)(D)(v) of the Act. Although the petitioner left his father's household in March 2004 prior to turning 21, the petitioner has credibly addressed the abuse he endured, the reason he left the household, and the facets of his relationship with his father, which included his father's continued control and manipulation of the petitioner even after the petitioner left the household in 2004. Upon review of the totality of the evidence in the record, the petitioner has demonstrated that his U.S. citizen father's abuse was at least one central reason for his filing delay and, thus, he is eligible for the late-filing waiver at section 204(a)(1)(D)(v) of the Act. He consequently met the definition of a child at section 101(b)(1)(B) of the Act when he filed the Form I-360 and is eligible for immigrant classification as the abused child of a U.S. citizen under section 204(a)(1)(A)(iv) of the Act.

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 been met and the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.