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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B9

Date: MAY 17 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

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.

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 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, and the petition will remain denied.

The petitioner is a citizen of Ukraine who is seeking 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 the abused child of a United States citizen.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent because the petitioner's mother and former stepfather divorced before the petition was filed. The director also found that the petitioner did not establish that his former stepfather's abuse was one central reason for his failure to file his petition before his twenty-first birthday.

On appeal, counsel for the petitioner cites *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981), and asserts that the petitioner is eligible for classification as an abused child because the relationship between the stepchild and the stepparent is not terminated upon divorce. Counsel also asserts that the petitioner established that the abuse was not just one central reason, but the only reason for the filing delay.

Applicable Law

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 . . . (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred[.]

Section 204(a)(1)(A)(iv) of the Act provides:

> 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 two 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), 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] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

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:

> 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].

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner was born in the Ukraine on [redacted] The petitioner's biological mother wed a U.S. citizen on [redacted] 2004 in [redacted]. On April 6, 2005, the petitioner entered the United States as a K-2 child of a K-1 fiancée visa holder. According to the petitioner, he and his mother moved out of the residence they shared with his former stepfather in November 2005 due to abuse. The petitioner's mother and former stepfather were divorced on March 27, 2007.

The petitioner filed the instant Form I-360 on December 26, 2007 when he was 21 years old. The director determined that because the petitioner's mother and former stepfather were divorced on March 27, 2007, no qualifying relationship existed between the petitioner and his former stepfather as of the date of the filing of the petition. The director determined further that the petitioner did not establish that any abuse he suffered by his former stepfather was one central reason for his failure to file the instant Form I-360 before he turned 21 years of age.

On appeal, counsel cites *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981) in support of his claim that a divorce does not automatically severe a stepparent/stepchild relationship. Counsel contends that the only reason the petitioner did not file the Form I-360 before turning the age of 21 was due to his manipulation and control by his former stepfather. Counsel states that at the divorce proceedings, the petitioner's former stepfather reassured the petitioner's mother that he had filed an adjustment of status application on the petitioner's behalf and that he would forward any correspondence that he received regarding the application to the petitioner and his mother. According to counsel, the petitioner's mother's reliance on the statements made by her former spouse is evidenced by her inclusion of the

petitioner on her Form I-751, Petition to Remove Conditions on Residence, that she filed in June 2007 wherein she listed the petitioner as a dependent assuming that his status had already been adjusted.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director determined that pursuant to section 204(a)(1)(A)(iv) of the Act, the termination of a marriage that created a stepparent/stepchild relationship can only occur after the filing of a Form I-360. The director's conclusion, however, is erroneous and shall be withdrawn because he failed to consider section 204(a)(1)(D)(v) of the Act, which provides for the filing of a petition in the case of a petitioner who: is between the ages of 21 and 25; "qualified to file a petition . . . as of the day before the date on which the individual attained 21 years of age"; and can show a connection between the delay in filing and the abuse. Thus the proper inquiry is not the status of the parents' marriage at the time of filing the self-petition, but whether the petitioner met the eligibility criteria at section 204(a)(1)(A)(iv) of the Act on the day before his or her twenty-first birthday and can show that any abuse was at least one central reason for the filing delay.

In this case, the petitioner has failed to establish the first prong of section 204(a)(1)(D)(v) of the Act, in that he did not qualify to file a petition under section 204(a)(1)(A)(iv) of the Act as of the day before he turned 21 (June 6, 2007). The evidence in the record establishes that the petitioner was abused by his former stepfather, that he resided with his former stepfather, and that he is a person of good moral character. The petitioner has not, however, established that he met the definition of a child at section 101(b)(1)(B) of the Act as of June 6, 2007.

The petitioner's mother and his former stepfather were married on [redacted], 2004 when the petitioner was 17 years old, and they subsequently divorced on [redacted], 2007 when the petitioner was 20 years old. To remain eligible as a child under section 101(b)(1)(B) of the Act despite a divorce or legal separation that created the stepparent/stepchild relationship, a petitioner must establish that a family relationship has continued to exist as a matter of fact between the stepparent and stepchild. *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981).

Here, the petitioner has failed to demonstrate any continuing relationship with his stepfather. The petitioner declared in his personal statement that he and his mother ceased living with his former stepfather in November 2005 due to abuse, and that the next time he saw his former stepfather was at the divorce hearing in March 2007. The petitioner does not indicate that he maintained any contact with his former stepfather either after they stopped living together in November 2005 or after the divorce hearing in March 2007. Accordingly, the petitioner cannot establish that a family relationship continued to exist as a matter of fact between him and his stepfather as of the day before he turned 21. Thus, the petitioner no longer met the definition of a child on June 6, 2007, and he is ineligible for immigrant classification as an abused child under section 204(a)(1)(A)(iv) of the Act.

On appeal, counsel acknowledges the holding in *Matter of Mowrer, Id.* but states that it is inapplicable to Form I-360 petitions filed by abused children and is only relevant in the context of alien relative petitions (Form I-130). Counsel states further that requiring a petitioner to maintain a relationship with

the abuser goes against legislative intent and leads to absurd results because abused spouses can qualify for immediate relative classification despite being divorced from their abusers.

The self-petitioning provisions for abused children were first enacted in 1994. Section 40701(a) of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (Sept. 13, 1994). In 2000, Congress amended these provisions to extend eligibility to children whose abusive parent had, within the past two years, lost U.S. citizenship or lawful permanent residency due to an incident of domestic violence. Victims of Trafficking and Violence Protection Act of 2000, Section 1503(b)(2), Title V, Division B, Pub. L. No. 106-386 (Oct. 28, 2000). At the same time, Congress provided age-out protections for self-petitioning children (and derivative children of abused spouses) whose petitions were filed prior to their twenty-first birthday, but who had not obtained lawful permanent residency by that date. *Id.* at section 1503(d)(2) (adding subsections 204(a)(1)(C) and (D) of the Act). In 2005, Congress extended eligibility even further to protect individuals who were abused as children, but who failed to file before turning 21, in central part, due to the abuse. Section 805(c), Violence Against Women and Dept. of Justice Reauthorization Act of 2005, Pub. L. 109-162 (Jan. 5, 2006). Counsel fails to point to any specific language in these statutory amendments or their legislative history to support his claim that requiring a petitioner to maintain a relationship with the abuser goes against Congressional intent.

Similarly, counsel's argument that the holding in *Matter of Mowrer* does not apply in the context of an abused child self-petition is without merit. All children seeking immigrant status as the abused child of a U.S. citizen under section 204(a)(1)(A)(iv) of the Act must show that they are eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on their relationship to the abuser. Section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv); 8 C.F.R. § 204.2(e)(1)(A) – (B). The definition of a child at section 101(b) of the Act applies to all sections of Title II of the Act, including all family-based immigrant petitions filed under section 204 of the Act. Section 101(b) of the Act, 8 U.S.C. § 1101(b). Thus, the holding in *Mowrer* is applicable to self-petitions for abused children as it relates to meeting the definition of a child at section 101(b) of the Act.

Accordingly, the petitioner has failed to establish the first prong of section 204(a)(1)(D)(v) of the Act, in that he did not qualify to file a petition under section 204(a)(1)(A)(iv) of the Act as of the day before he turned 21. On that date, he did not meet the definition of a child at section 101(b) of the Act because he had no familial relationship with his stepfather after the divorce and was consequently ineligible for immediate relative classification based on such a relationship. Thus, the petitioner is ineligible for immigrant classification as an abused child pursuant to section 204(a)(1)A)(iv) of the Act.

The Abuse was Not One Central Reason for the Filing Delay

Even if the petitioner did meet the eligibility requirements at section 204(a)(1)(A)(iv) of the Act, he has not demonstrated that the filing delay was related to his former stepfather's abuse.

To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a petitioner need not show that the abuse was the only cause for the delay. Rather, to establish that a stepparent's abuse was "at least one central reason for the filing delay," the petitioner must demonstrate, by a preponderance of the relevant, credible evidence, a nexus between the abuse and the filing delay that is more than incidental or tangential.

According to the petitioner in his declaration, he and his mother ceased living with his former stepfather in November 2005 when the petitioner was 19 years old. The petitioner's mother stated in her declaration that in April 2006 she went to see an attorney, who filed a Freedom of Information Act (FOIA) request so that they could obtain information about the petitioner's immigration status.[1] The petitioner's mother stated further that when she and the petitioner saw the U.S. citizen abuser at the divorce proceedings in [redacted] 2007, he informed them that he had filed the necessary paperwork for the petitioner to become a legal resident and that he would forward any correspondence from U.S. Citizenship and Immigration Services (USCIS) to them. According to the petitioner's mother, she included the petitioner on her Form I-751, Petition to Remove Conditions on Residence, that she filed in June 2007, which was returned by USCIS because the petitioner's conditional residence status could not be determined. The petitioner's mother recounted further that in July 2007, she responded to USCIS's rejection of the Form I-751 by explaining that her former spouse had told her he had taken care of the necessary paperwork for the petitioner's residency. According to the petitioner's mother, she received a response to her letter from USCIS in August 2007, indicating that the petitioner was not a conditional resident.

On appeal, counsel states that shortly after receiving the August 2007 letter from USCIS, the petitioner and his mother sought his counsel. Counsel maintains that the abuse was the sole reason for the filing delay because the petitioner and his mother believed the petitioner's former stepfather's malicious lies about following through with the necessary paperwork for obtaining legal residence for the petitioner in the United States.

There is an insufficient nexus between the petitioner's former stepfather's abuse and the filing delay. The record indicates that the petitioner escaped from his former stepfather's abuse more than two years before this petition was filed. As stated earlier, the petitioner does not indicate that he had any further contact with his former stepfather after they stopped living in the same household, and the next time the petitioner saw his former stepfather was more than one year after leaving their joint residence when he saw him at the divorce proceedings in March 2007. The petitioner has provided no probative details of any effects of the abuse that contributed to the delay in the filing of his petition. For example, the record does not indicate that the petitioner's former stepfather used the petitioner's lack of immigration status as a means of continuing his abuse or exerting coercive control over the petitioner. While it is unfortunate that the petitioner was unaware of the self-petitioning provisions before his twenty-first birthday, the statute does not encompass such lack of knowledge alone as a basis to excuse a late-filing. As the petitioner has not demonstrated that his

[1] The petitioner's mother received the FOIA response in June 2007.

former stepfather's abuse was at least one central reason for his filing delay, he is ineligible for the late-filing waiver at section 204(a)(1)(D)(v) of the Act.

Conclusion

The petitioner has failed to show that he qualified to file the instant petition on the day before he turned 21, and that the abuse was at least one central reason for the delay in filing his petition. He consequently no longer meets the definition of a child at section 101(b)(1)(B) of the Act and is ineligible for immigrant classification as the abused child of a U.S. citizen under section 204(a)(1)(A)(iv) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.