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



U.S. Citizenship
and Immigration
Services

Date: JUN 10 2013

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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:

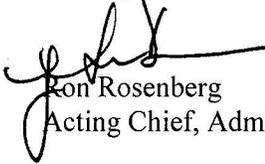
SELF-REPRESENTED

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition and 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 seeks immigrant classification under 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 child battered or subjected to extreme cruelty by his U.S. citizen parent.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent, joint residence, that the petitioner was battered or subjected to extreme cruelty, or that the petitioner was a person of good moral character. On appeal, the petitioner submits additional evidence.

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.

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 eligibility requirements 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 United States 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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

The regulation at 8 C.F.R. § 204.2(e)(2)(i) further states:

(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 in the United States. . . Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence 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 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 types of evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *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. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

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 is a citizen of Grenada who was born on December 9, 1991. The petitioner entered the United States on October 8, 2000 as a nonimmigrant visitor. In 2009, when he was 17 years old, the petitioner's mother married a United States citizen. The petitioner filed the instant Form I-360 on February 17, 2011, when he was 19 years old.

On appeal, the petitioner submits a self-affidavit, affidavits from two friends, his mother and step-father's marriage certificate, and a New Jersey police clearance.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director determined that the petitioner's evidence was insufficient to support a finding of a qualifying relationship with his step-father because on his Form I-360 the petitioner marked that he was married. On appeal, the petitioner submits an affidavit, dated December 10, 2012, in which he explains that he is not and has never been married, and that the person who filled out the form for him made a clerical error. As the petitioner is not married, and his mother married his step-father when he was under the age of 18 years, the petitioner has established a qualifying relationship with his step-father under section 204(a)(1)(A)(iv) of the Act.

Joint Residence

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner resided with his step-father. On the Form I-360, the petitioner claimed that he lived with his step-father from May 2009 until August 2010 and that their last joint address was on [REDACTED] in [REDACTED] New Jersey. The petitioner did not submit any evidence below to support this assertion.

In his affidavit on appeal, the petitioner states that when his mother and step-father were married, they moved in together at the [REDACTED] address in May 2009, but that he stayed living with his aunt on [REDACTED] New York. The petitioner does not specify when or if he ever moved in with his step-father and he does not describe their home(s) or shared residential routines in any detail, apart from the alleged abuse. Furthermore, in their affidavits, both [REDACTED] and [REDACTED] referred to the times that the petitioner "went to visit" his mother and step-father in New Jersey. No other evidence was submitted to establish that the petitioner resided with his step-father at any time. Accordingly, the record does not establish that the petitioner resided with his step-father, as required by section 204(a)(1)(A)(iv) of the Act.

Battery or Extreme Cruelty

As the petitioner has failed to establish that he resided with his step-father, he has necessarily failed to establish that any abuse occurred while the self-petitioner was residing with the abuser, as required under 8 C.F.R. § 204.2(e)(1)(vi). Even if he had resided with his step-father, however, the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's step-father battered him or subjected him to extreme cruelty.

The petitioner did not submit any evidence below that would indicate that his step-father battered him or subjected him to extreme cruelty. On appeal, the petitioner states that on one occasion his step-father punched him in the stomach, and that on another he tried to stab him with a knife. The petitioner also reports that his step-father called him names and threatened to "call immigration." In his affidavit,

Mr. [REDACTED] states that the petitioner told him that his step-father tried to stab him. Mr. [REDACTED] reports that the petitioner told him that his step-father punched him in the stomach. While the petitioner and Mr. [REDACTED] provided examples of battery in their statements, they failed to describe the probative details of these alleged incidents. Consequently, their statements are insufficient to establish physical violence perpetrated by the petitioner's step-father against the petitioner. Overall, the step-father's actions as described by the petitioner are not comparable to those described in the regulation at 8 C.F.R. § 204.2(e)(1)(vi) as extreme cruelty. Furthermore, as the petitioner has failed to show he resided with his step-father, he has failed to show that any alleged abuse occurred while the self-petitioner was residing with the abuser. Accordingly, the petitioner has not established by a preponderance of the evidence that his step-father subjected him to battery or extreme cruelty as required by section 204(a)(1)(A)(iv) of the Act.

Good Moral Character

The record also fails to demonstrate that the petitioner is a person of good moral character. Although the petitioner provided a New Jersey police clearance letter, the evidence shows that the petitioner lived in New York with his aunt, and thus he failed to provide 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 three-year period immediately preceding the filing of the self-petition as required under 8 C.F.R. § 204.2(c)(2)(v). He also failed to provide an explanation of why said background checks were not provided. *Id.* As such, the petitioner has failed to demonstrate that he is a person of good moral character as required by section 204(a)(1)(A)(iv) of the Act.

Conclusion

The petitioner has failed to show that he resided with his step-father, that his step-father battered him or subjected him to extreme cruelty, and that he is a person of good moral character. He is therefore ineligible for immigrant classification as the abused child of a U.S. citizen under section 204(a)(1)(A)(iv) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 at 375. Here, that burden has not been met.

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