

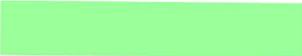


U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **AUG 28 2014** Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-Petitioner: 

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (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.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by her United States citizen stepparent. The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent and corresponding eligibility for immigrant classification based on this relationship. The director also denied the petition on the basis of her determination that the petition was filed after the petitioner reached the age of 21 and had not shown that her stepmother's abuse was a central reason for her filing delay.

Relevant Law and Regulations

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 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), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General 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)(D)(v) of the Act further 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 prescribes:

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:

(i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she: (A) Is the child of a citizen or lawful permanent resident of the United States; (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. . . .

(ii) *Parent-child relationship to the abuser.* The self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

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:

(ii) *Relationship.* A self-petition filed by a child must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of the relationship evidence between . . . (E) A self-petitioning stepchild and an abusive stepparent is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parent and the stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ukraine who was born on August 9, 1988. The petitioner entered the United States as a visitor on August 8, 2000. On April 29, 2006, when the petitioner was 17 years old, her father married N-L¹, a U.S. citizen. The petitioner filed the instant Form I-360 on

¹ Name withheld to protect the individual's identity.

October 17, 2011 when she was 23 years old. The director denied the petition and the petitioner, through counsel, timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On appeal, the petitioner submits a marriage certificate and divorce decree for her father and N-L-. The petitioner's father and N-L- were married on April 29, 2006, when the petitioner was 17 years old. The petitioner's father and stepmother were divorced on May 18, 2011, when the petitioner was 22 years old. Accordingly, the petitioner has established that a family relationship existed as a matter of fact between her and N-L- as of the day before she turned 21 (August 9, 2009). On that date, she met the definition of a child at section 101(b)(1)(B) of the Act. She consequently had a qualifying parent-child relationship and was eligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iv) of the Act.

The Abuse was Not One Central Reason for the Filing Delay

Although the petitioner has established that she had a qualifying relationship and was eligible for immediate relative classification, the petitioner has not demonstrated that the filing delay of the Form I-360 was related to N-L-'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, the petitioner must establish that a stepparent's abuse was "at least one central reason for the filing delay," and 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.

Here, the petitioner has not explained why she was unable to file her petition before her twenty-first birthday and she did not discuss any abuse or enduring effects of the abuse that contributed to her filing delay. In her declarations below, the petitioner described N-L- as verbally abusive and recounted that she began to despise N-L-. According to the petitioner, she ceased living with N-L- in October of 2010 when she was 22 years old but did not file her Form I-360 until October 17, 2011 when she was 23 years old. The petitioner did not state that her former stepmother's verbal abuse delayed the filing of her Form I-360. Further, the remaining evidence in the record indicates that the petitioner had no contact with N-L- after they stopped residing together and after the divorce between the petitioner's father and N-L-. On appeal, the petitioner reiterates that her former stepmother abused her, her father and her sister, but she does not discuss any connection between the abuse and her filing delay. The petitioner has not demonstrated that N-L-'s abuse was at least one central reason for her filing delay and she is ineligible for the late-filing exception at section 204(a)(1)(D)(v) of the Act.

Conclusion

The petitioner established that she had a qualifying relationship with her former stepmother and was eligible for immediate relative classification based on such a relationship as of the day before her twenty-first birthday. However, she did not demonstrate that her former stepmother's abuse was at least one central reason for the delay in filing her self-petition. Consequently, the petitioner is ineligible for immigrant classification as the abused child of a U.S. citizen pursuant to subsections 204(a)(1)(A)(iv) and (D)(v) of the Act.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.