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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 2 7 2014 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:

[redacted]

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.

Thank you,

Ron Rosenberg
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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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

The director denied the petition for failure to establish a qualifying parent-child relationship with a U.S. citizen and corresponding eligibility for immediate relative classification because the petitioner's mother and former stepfather divorced before the petition was filed. On appeal, counsel contends that the petitioner remains eligible despite the divorce.

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 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) 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.

Facts and Procedural History

The petitioner is a citizen of Ecuador who was born on December . On February her mother married M-M-[1], a United States citizen, in Ecuador. The petitioner entered the United States on May 30, 2009 as a K-4 nonimmigrant stepchild of a U.S. citizen. Her mother and stepfather divorced on July The petitioner filed the instant Form I-360 self-petition on June when she was 18 years old.

We conduct appellate review on *a de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the director did not consider whether the petitioner had a continuing relationship with her former stepfather after her parents' divorce, the matter will be remanded to the director for further action.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner's mother and former stepfather married on February when the petitioner was 13 years old, and they subsequently divorced on July , when the petitioner was 16 years old. The petitioner filed this self-petition less than two years later on June 14, 2012, when she was 18 years old. The director erroneously concluded that the divorce automatically terminated the petitioner's relationship with her former stepfather and determined that the petitioner was not eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act as the abused child of a U.S. citizen.

For immigration purposes, a stepparent-stepchild relationship is not necessarily terminated by the divorce of a child's parent and stepparent. *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981). Neither physical separation nor legal termination of the marriage will automatically disqualify a stepchild for immediate relative classification. *Id.* at 614. Instead, the appropriate inquiry is whether a family relationship has continued to exist as a matter of fact between the stepparent and stepchild. *Id.* at 615. *See also Matter of Mourillon*, 18 I&N Dec. 122, 125-26 (BIA 1981) (affirming *Mowrer* and applying the same inquiry to stepsibling relationships). Consequently, self-petitioning children may still establish a qualifying relationship and meet the definition of a stepchild at section 101(b)(1)(B) of the Act if they demonstrate that they continued to have a relationship with their former stepparents as a matter of fact. Such stepchildren will remain eligible for immigrant classification under the self-petitioning provisions of section 204(a)(1)(A)(iv) of the Act if they meet all other eligibility criteria.

On appeal, counsel cites *Matter of Mowrer* and a single, undated message from the petitioner to her former stepfather to assert that the petitioner had a qualifying, post-divorce relationship. We cannot resolve the issue on appeal because the director did not address it below nor advise the petitioner of the types of evidence that might demonstrate a continuing relationship in fact, thus failing to notify the petitioner of the full reasons for denial and depriving her of the

[1] Name withheld to protect the individual's identity.

opportunity to file a meaningful appeal. *See* 8 C.F.R. § 103.3(a)(1) (mandate applicable to all immigration benefits requests that the Service officer must explain "the specific reasons for denial."); 8 C.F.R. § 204.2(e)(3)(ii) (reiterating the same mandate for abused child self-petitions). Accordingly, the petition will be remanded to the director for issuance of a Request for Evidence (RFE) to afford the petitioner the opportunity to demonstrate a continuing relationship in fact, if any, between herself and her former stepfather from the date her mother and former stepfather divorced until the date she filed this Form I-360 self-petition.

To establish a continuing relationship, a self-petitioner is not required to endure further battery or extreme cruelty or submit evidence of ongoing abusive contact with the former stepparent. Evidence of a continued stepparent-stepchild relationship may include, but is not limited to: affidavits of the petitioner, family members, friends, teachers, church or other organization leaders or members, or any other individuals with knowledge of the child's relationship with the former stepparent; telephone, electronic mail, letters or any other correspondence or other evidence of continued communication between the child and the former stepparent; relevant documents from schools, social services providers, or family court proceedings; family photographs; documentation of ongoing financial support or obligations; or any other relevant and credible evidence of a continued relationship in fact between the child and the former stepparent.

Conclusion

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent and corresponding eligibility for immediate relative classification based upon that relationship because the petitioner's mother and former stepfather divorced before the petition was filed. The director, however, failed to consider whether, at the time of filing, a family relationship continued to exist between the petitioner and her former stepfather. Consequently, the matter is remanded to the Vermont Service Center for further action consistent with this decision.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

ORDER: The September 16, 2013 decision of the Vermont Service Center is withdrawn. The petition is remanded to that service center for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.