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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 10 2006  
EAC 03 231 54774

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Mexico who seeks classification as a special immigrant 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 subjected to battery or extreme cruelty by her United States citizen parent. The director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship with a U.S. citizen at the time her petition was filed because her mother and U.S. citizen stepfather were divorced nearly two years before the petition was filed. On appeal, counsel contends that the petitioner is nonetheless eligible for classification under section 204(a)(1)(A)(iv) of the Act. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish that she had a qualifying relationship with a U.S. citizen or was eligible for immediate relative classification as the child of a U.S. citizen at the time her petition was filed. Counsel's claims on appeal do not overcome these grounds for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(e)(3)(ii).

Section 204(a)(1)(A)(iv) of the Act states, in pertinent part:

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 [section 201(b)(2)(A)(i) of the Act], 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 . . . 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.

The eligibility requirements for a petition filed under section 204(a)(1)(A)(iv) of the Act 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) . . . of the Act if he or she:
  - (A) Is the child of a citizen . . . of the United States;
  - (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . 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 when the petition is filed and when it is approved. 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.

Section 201(b)(2)(A)(i) of the Act states, in pertinent part, "*Immediate relatives.* For purposes of this subsection, the term "immediate relatives" means the children, spouses, and parents of a citizen of the United States . . . ."

Section 101(b)(1) of the Act defines a “child” as, in pertinent part:

an unmarried person under twenty-one years of age who is –

\* \* \*

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

Although section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act allows former spouses of abusive U.S. citizens to file a self-petition within two years of the legal termination of their marriage, no similar provision exists for stepchildren of abusive U.S. citizens whose stepchild relationships have ended before their self-petitions were filed. In this case, the record indicates that the petitioner was born on April 2, 1985 and that her biological mother’s valid marriage to [REDACTED] a U.S. citizen, was legally terminated on August 23, 2001. The petitioner filed her Form I-360 on August 11, 2003, nearly two years after her mother’s divorce and the resultant termination of the petitioner’s stepchild relationship with Mr. [REDACTED]. Consequently, the petitioner did not establish that she was the child of a U.S. citizen or that she was eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act as the child of a U.S. citizen when her petition was filed.

On the Form I-290B, counsel states, “Under the regulations, including INA 204(a)(1)(A)(vi), a reasonable interpretation is that the divorce does not statutorily limit this applicant’s eligibility as a step child to file this petition.” Counsel references unspecified regulations and cites a statutory section which does not apply to the petitioner’s situation. On the Form I-290B, which was filed on August 18, 2005, counsel indicated that she would submit a brief and /or evidence to the AAO within 30 days. Over five months later on January 26, 2006, the AAO notified counsel by facsimile that it had not received any further evidence or brief and requested counsel to send a copy of any additional evidence and/or brief to the AAO. The notice further informed counsel that failure to respond within five business days could result in the summary dismissal of the appeal. To date, the AAO has not received a response from counsel.

Consequently, the current record does not establish that the petitioner had a qualifying relationship with a U.S. citizen or was eligible for immediate relative classification due to such a relationship when her petition was filed. Based on the present record, the petitioner is thus statutorily ineligible for classification under section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(e)(3)(ii), which states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

The director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome her statutory ineligibility.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.