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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

Bq

FILE:

[REDACTED]
EAC 06 099 50149

Office: VERMONT SERVICE CENTER

Date: JUN 20 2007

IN RE:

Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered Child Pursuant to Section 204(a)(1)(B)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)

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

fr Robert P. Wiemann, Chief
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 appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien subjected to battery or extreme cruelty by her lawful permanent resident parent.

The director denied the petition because the petitioner failed to establish that she had a qualifying relationship with her lawful permanent resident stepfather, was eligible for second preference immigrant classification under section 203(a)(2)(A) of the Act and was a person of good moral character.

On appeal, counsel submits additional evidence.

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part:

An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien 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 permanent resident parent.

Section 204(a)(1)(B)(v) of the Act also provides, in pertinent part:

(I) For the purposes of any petition filed or approved under clause . . . (iii), divorce . . . by a spouse or parent after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, shall not affect the alien's ability to adjust status under subsectio[n] (a) . . . of section 245 or obtain status as a lawful permanent resident based on an approved self-petition under clause . . . (iii).

Section 204(a)(1)(J) of the Act further 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 Attorney General 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 Attorney General.

The eligibility requirements for a petition filed under section 204(a)(1)(B)(iii) 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)(B)(iii) of the Act if he or she:

(A) Is the child of a . . . lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship;

* * *

(F) Is a person of good moral character[.]

* * *

(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 [.]

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[.]

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(B)(iii) of the Act are explicated in the regulation at 8 C.F.R. § 204.2(e)(2), which states, in pertinent part:

(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.

(ii) *Relationship.* A self-petition filed by a child must be accompanied by . . . 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 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;

* * *

(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. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of good moral character.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Peru who was born on February 16, 1985. The petitioner's biological mother divorced her biological father on May 4, 1989 in Peru. The petitioner's mother married F-C-¹, a lawful permanent resident of the United States, on December 4, 1991 in Florida. At the time of the marriage, the petitioner was six years old. The petitioner filed this Form I-360 on February 15, 2006, when she was 20 years old. On May 19, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite qualifying relationship with a lawful permanent resident, eligibility for second-preference immigrant status based on such a relationship and good moral character. Neither counsel nor the petitioner responded to the NOID.² Accordingly, the director denied the petition on the three grounds cited in the NOID on September 13, 2006. Counsel timely appealed.

On appeal, counsel submits evidence that establishes the petitioner's qualifying relationship with her former stepfather and her corresponding eligibility for second-preference immigrant classification. However, counsel does not submit any evidence of the petitioner's good moral character. Accordingly, the appeal must be dismissed.

Qualifying Relationship and Eligibility for Second-Preference Immigrant Classification

The record shows that the petitioner's former stepfather is a lawful permanent resident of the United States, that the petitioner's mother and stepfather were married before she turned 18 and that the petitioner was under 21 and unmarried at the time this petition was filed.

However, with the Form I-360, counsel submitted copies of an "Order to File" and an "Order of Default" issued by the Circuit Court of the Eleventh Judicial Circuit in Miami-Dade County, Florida

¹ Name withheld to protect individual's privacy.

² On appeal, counsel claims that she never received the NOID. The record shows that the NOID was mailed to counsel's address as stated on the Form I-360 and the Form G-28, Notice of Entry of Appearance as Attorney. Service of the NOID was effective because the notice was sent to counsel's last known address of record. *See* 8 C.F.R. § 103.5a(a)(1).

in the Family Division case filed by the petitioner's mother against her stepfather. In her February 10, 2006 letter accompanying the Form I-360, counsel referred to these court documents as "Copy of Divorce decree of the marriage" between the petitioner's mother and stepfather, although neither of the court orders identify the case as a divorce or other termination of marriage proceeding. In the NOID, the director requested the petitioner to submit evidence of the legal termination of the marriage. Neither counsel nor the petitioner responded to the NOID. Accordingly, the director denied the petition, in part, for lack of the requisite qualifying relationship and eligibility for second-preference immigrant classification based on such a relationship.

On appeal, counsel submits a certified copy of the Final Judgment of Dissolution of Marriage between the petitioner's mother and stepfather, which shows that the marriage was legally terminated on February 16, 2006. The instant petition was filed on February 15, 2006. Accordingly, the petitioner had a qualifying relationship with her former stepfather and was eligible for second-preference immigrant classification based on such a relationship at the time this petition was filed, as required by section 204(a)(1)(B)(iii) of the Act. The subsequent dissolution of the marriage of her mother and stepfather does not affect the petitioner's eligibility for classification under section 204(a)(1)(B)(iii) of the Act. Section 204(a)(1)(B)(v)(I) of the Act, 8 U.S.C. § 1154(a)(1)(B)(v)(I) (2007).

Good Moral Character

On appeal, counsel submits further evidence of the petitioner's residence with her former stepfather, but does not address the final ground for denial of the petition: lack of evidence of the petitioner's good moral character. The petitioner was over 14 years of age when the petition was filed, but she has submitted no affidavit of her good moral character, local police clearances or state-issued criminal background checks, or an explanation of why such clearances or checks were unavailable, accompanied by other credible evidence of her good moral character pursuant to the regulation at 8 C.F.R. § 204.2(e)(2)(v). Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(B)(iii) of the Act.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.