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U.S. Citizenship
and Immigration
Services



B9

FILE: [REDACTED]
EAC 06 141 50448

Office: VERMONT SERVICE CENTER

Date: DEC 08 2008

IN RE: Petitioner: [REDACTED]

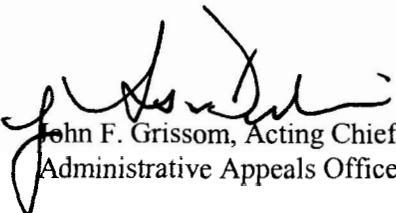
PETITION: Petition for Special Immigrant Abused Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 battered or subjected to extreme cruelty by her United States citizen stepparent.

The director denied the petition finding that the petitioner failed to establish that she resided with her citizen stepparent and was battered or subjected to extreme cruelty by her citizen stepparent.

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

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) of the Act], 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 of Homeland Security] 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)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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].

According to the evidence in the record, the petitioner was born in Canada on January 23, 1996. The petitioner’s mother, [REDACTED], married United States citizen J-B-¹ on February 12, 2002, when the petitioner was six years old. The petitioner filed the instant petition on April 10, 2006. On June 29, 2006, the director issued a Notice of Intent to Deny (NOID) the petition. The petitioner timely responded to the NOID with additional evidence. In a decision dated October 12, 2006, the director denied the petition, finding that the petitioner failed to establish that she resided with her citizen stepparent and that she was battered or subjected to abuse by her citizen stepparent. The petitioner, through counsel, filed a timely appeal and brief.

¹ Name withheld to protect individual’s identity

On appeal, counsel asserts that the petitioner meets the eligibility requirements. As will be discussed, we concur with the finding of the director.

Residence With the Citizen Parent

On the Form I-360 the petitioner claims to have resided with J-B-, her citizen parent, from February 2002 until January 2005 and that she last resided with him at [REDACTED] in Falls Church, Virginia. The record, however, contains no testimonial or documentary evidence to meet her burden of proof. Although the record contains two unsigned statements from the petitioner's mother, the statements contain no probative details regarding the petitioner's residence with J-B-. Similarly, although the record contains a lease covering the period from February 12, 2002 to February 2003 for an apartment located at [REDACTED] in Washington, D.C., only the petitioner's mother and J-B- are listed as occupants. On appeal, the petitioner submits statements from her mother, other family members, and a family friend. The statements, however, relate to the petitioner's mother's claim of abuse and residence with her spouse and contain no probative details regarding the petitioner's residence with her citizen parent. Similarly, while the petitioner also submitted a copy of her mother's psychological evaluation, the evaluation does not mention the petitioner, much less provide any probative details regarding the petitioner's residence with her citizen parent.

Accordingly, the petitioner has failed to establish that she resided with her citizen parent, as required by section 204(a)(1)(A)(iv) of the Act.

Battery or Extreme Cruelty

The record contains no testimonial or documentary evidence to establish that the petitioner was battered or subjected to extreme cruelty by her citizen parent. Although the record contains evidence regarding the petitioner's mother's claim of abuse, her claims only mention actions that were taken against her. The petitioner's mother does not describe the petitioner being present during any of the alleged abuse or being a victim of the alleged abuse. The statements submitted by the petitioner's family members and family friend and the petitioner's mother psychological report also fail to indicate any abuse perpetrated against the petitioner. Accordingly, the petitioner has failed to establish that she was battered or subjected to extreme cruelty by her citizen parent, as required by section 204(a)(1)(A)(iv) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.