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U.S. Citizenship
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Services

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By

FILE: [REDACTED]
EAC 07 051 50091

Office: VERMONT SERVICE CENTER

Date: OCT 14 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:

SELF-REPRESENTED

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, 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.

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 Haiti on January 19, 1988. The petitioner’s mother, [REDACTED], married P-V-,¹ a United States citizen, on October 23, 1996, when the petitioner was eight years old. The petitioner filed the instant petition on December 11, 2006. On July 2, 2007, the director issued a Request for Evidence (RFE) to establish, *inter alia*, that the petitioner is a person of good moral character and that she resided with P-V-. On December 13, 2007, the director issued a Notice of Intent to Deny (NOID) the petition that notified the petitioner of deficiencies in the record and afforded her the opportunity to submit further evidence to establish, *inter alia*, that she is a person of good moral character and that she resided with P-V-. In a decision dated March 10, 2008, the director found that although the petitioner established that P-V- is a United States citizen and that she is a person of good moral character, she failed to establish that she resided with P-V-.

The petitioner filed a timely appeal and argues that the director “ignored the facts” of her case. As will be discussed, we concur with the finding of the director that the petitioner failed to establish that she resided

¹ Name withheld to protect individual’s identity.

with P-V-. Further, beyond the decision of the director, we find an additional issue that precludes approval of the petition.

On the Form I-360, the petitioner claimed that she resided with P-V- from July 1998 until November 2003 and that she last resided with him at [REDACTED] Queens Village in New York. At the time of filing, although the petitioner submitted evidence which demonstrates that both her mother and P-V- resided at the claimed address, the petitioner provided no testimonial or documentary evidence to establish that she resided at that address. The petitioner submitted no additional evidence regarding her residence with P-V- in response to the director's RFE or NOID. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On that basis alone, the petition may not be approved.

On appeal, the petitioner generally states that she shared the same home with P-V-, her mother, and their child "until the abuse became u[n]bearable for her [mother]." The petitioner provides no further probative information regarding her residence with P-V-, such as description of the residence, her possessions within the home, or any other details which demonstrate her residence with P-V- at the claimed address. Although the petitioner also submitted utility bills on appeal, the bills are addressed to the petitioner's mother and P-V- and, therefore, do not establish the petitioner's residence at the claimed address. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that she resided with P-V- as required by section 204(a)(1)(A)(iv) of the Act.

Beyond the decision of the director, we find an additional issue that precludes approval. Specifically, we find the petitioner failed to establish that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. In this case, the petitioner has submitted no affidavit regarding her good moral character. Further, although the director's decision indicated that the petitioner submitted the "results of a fingerprint check," this determination appears to be in error. While the petitioner did submit a "Non-Criminal Fingerprint Application" and fingerprint card from the New York City police department, the record does not contain evidence that a check was actually performed or the actual results of a check of her criminal history. As the petitioner has failed to submit an affidavit regarding her good moral character and a police clearance or background check, she has failed to establish her good moral character. We, therefore, withdraw the director's affirmative determination on this issue and find that the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iv) of the Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.