

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PHOTOCOPY



U.S. Department of Homeland Security
U.S. Citizenship & Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B4

APR 21 2009

FILE:

██████████
EAC 05 056 53191

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner: ██████████

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant 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 a United States 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].

As the facts and procedural history have been adequately documented in the previous decisions of the AAO, we will only repeat certain facts as necessary here. In this case, the director initially denied the petition on December 6, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen stepparent and that he was a person of good moral character. On appeal, the AAO concurred with the findings of the director but remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID), pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).¹ Upon remand, the director issued a NOID to former counsel of record on October 16, 2006, finding that the petitioner had established his good moral character but noting deficiencies regarding the petitioner's claim of abuse. In response to the

¹ On April 17, 2007, Citizenship and Immigration Services (CIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

NOID, former counsel indicated that no further evidence would be submitted. The director denied the petition on March 16, 2007 and certified the decision to the AAO. In a decision dated March 26, 2008, the AAO concurred with the findings of the director but remanded the case because the director's certification decision was improperly issued as it was issued to the petitioner at his former address.² On July 11, 2008, the director issued a new certification notice to the petitioner at his address of record. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further evidence since the issuance of that decision. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the reasons stated above, 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 July 11, 2008 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of July 11, 2008 is affirmed. The petition is denied.

² The certification decision was returned by the U.S. Postal Service on March 22, 2007 as "Attempted-Not Known Unable to Forward."