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



**U.S. Citizenship  
and Immigration  
Services**

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: APR 13 2010

EAC 07 226 51569

IN RE:

[Redacted]

PETITION: Petition for Immigrant Abused 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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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 Act, 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien child battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he had shared a joint residence with his father; and (2) that he is a person of good moral character.

The petitioner submitted a timely appeal on January 2, 2009.

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part, that an alien who is the child of a lawful permanent resident of the United States, or who was a child of a United States lawful permanent resident parent who within the past 2 years lost or renounced such 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), 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 (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 citizen parent.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under . . . 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].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part, the following:

*Self-petition by child of abusive citizen or lawful permanent resident—Eligibility.*

- (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:
  - (A) Is the child of a citizen or lawful permanent resident of the United States;
  - (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident parent;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;
- (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 and when it is approved. . . .

\* \* \*

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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

*Evidence for a child's self-petition –*

- (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.

\* \* \*

- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the petitioner is residing in the United States when the self-petition is filed. Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence may be submitted.
- (iv) *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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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 petitioner is a citizen of Italy who was born on April 12, 1990. His mother, who is now a permanent resident of the United States, married C-D-<sup>1</sup> a permanent resident of the United States, on March 4, 1999. Testimony of record indicates that C-D- died in May 2005.

The petitioner filed the instant Form I-360 on July 23, 2007. On February 28, 2008, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner resided with C-D-, and that he is a person of good moral character. The petitioner responded on May 8, 2008 and submitted additional evidence. After considering the evidence of record, the director denied the petition on July 31, 2008.

Counsel submitted an untimely appeal on September 11, 2008. As the appeal was untimely filed, it was not forwarded to the AAO but was rather considered by the director as a motion. On December 11, 2008, the director affirmed his previous decision to deny the petition. Counsel submitted a timely appeal of that decision on January 2, 2009.

### **Joint Residence**

In his July 31, 2008 decision, the director found the evidence of record insufficient to establish that the petitioner and C-D- ever shared a joint residence. The AAO notes that the regulation does not proscribe a specific length of time during which joint residence must have occurred, and finds that the entire record of proceeding, including the testimonial evidence submitted on appeal, establishes that the petitioner and C-D- shared a joint residence for at least a short period of time. That portion of the director's decision, therefore, is withdrawn.

### **Good Moral Character**

The regulation at 8 C.F.R. § 204.2(e)(2)(iv) 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, during the period beginning in July 2004 and ending in July 2007). The petitioner has submitted no affidavit regarding his good moral character and no police clearances or state-issued criminal background checks, despite having been placed on notice via the February 28, 2008 request for additional evidence and July 31, 2008 denial that such evidence was required. Nor has he submitted an explanation as to why such evidence is unobtainable. Accordingly, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(B)(iii) of the Act. The petition, therefore, may not be approved.

### **Qualifying Relationship and Eligibility for Classification as an Immediate Relative**

Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason, as the record of proceeding does not establish that the beneficiary is eligible for

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<sup>1</sup> Name withheld to protect individual's identity.

preference immigrant classification. The AAO notes that the record contains testimonial evidence that C-D- died in May 2005. The instant Form I-360, however, was not filed until July 2007, more than two years after C-D-'s death. If such testimonial evidence, which the AAO notes was submitted by the petitioner, is accurate, then the petitioner did not qualify as a child of a lawful permanent resident of the United States as of the date of the filing the instant petition. As was noted previously, section 204(a)(1)(B)(iii) of the Act provides for the filing of a self-petition when the alien is the child of a lawful permanent resident of the United States, or who was a child of a United States lawful permanent resident parent who within the past 2 years lost or renounced such status related to an incident of domestic violence. As his death occurred more than two years prior to the filing of the petition, the petitioner did not qualify as a child of a lawful permanent resident of the United States as of the date of the filing of the instant petition. For this additional reason, the petition may not be approved.

### Conclusion

The AAO disagrees with the director's determination that the petitioner failed to establish that he shared a joint residence with his father. However, the AAO agrees with the director's determination that the petitioner has failed to establish that he is a person of good moral character and, beyond the decision of the director, finds further that the petitioner has failed to establish that he had a qualifying relationship with C-D- at the time the petition was filed, and that he is therefore ineligible for preference immigrant classification as an immediate relative. For all of these reasons, the AAO will not disturb the director's denial of the petition.

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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

**ORDER:** The appeal is dismissed.