

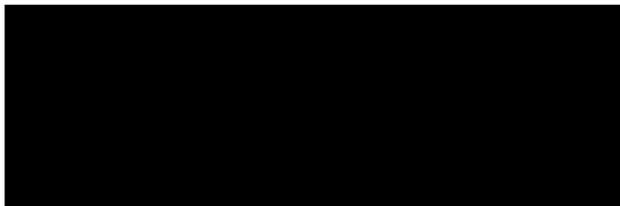
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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



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FILE: [REDACTED]
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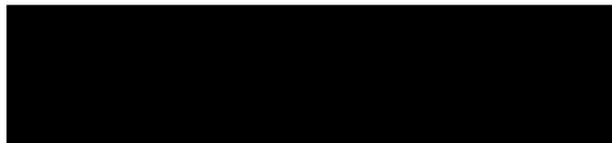
Office: VERMONT SERVICE CENTER

Date: AUG 18 2010

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
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 is a native and citizen of Cameroon who is seeking classification as a special immigrant 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 the battered child of a United States citizen.

The director denied the petition, finding that the petitioner is married and thus no longer qualifies as a “child” for immigration purposes. The director also found that the petitioner did not establish that she had the requisite qualifying relationship with a U.S. citizen because the GenQuest DNA Analysis report indicates that S-E¹, the alleged batterer/U.S. parent, is not the petitioner’s biological father.

On appeal, counsel for the petitioner asserts that the petitioner is eligible for the classification because, although she is currently married, the petitioner is going through a divorce and has contested the results of the DNA testing.

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, that 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), 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 101(b) of the Act provides:

- (1) The term “child” means an unmarried person under twenty-one years of age . . .

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Cameroon who was admitted into the United States on October 10, 2003, as a V2 nonimmigrant child. On January 7, 2004, the service center director denied the Form I-130, Petition for Alien Relative, which was filed on the petitioner’s behalf by S-E- on March 29, 2000, because S-E- failed to provide the requested evidence in support of the petitioner’s delayed birth certificate. On February 19, 2004, the director also denied a subsequent motion to reconsider. On March 28, 2007, S-E- filed a second I-130 petition on behalf of the petitioner, and the petitioner concurrently filed a Form I-485, Application to Adjust Status, both of which were denied on August 11, 2007. The I-130 petition was denied based on the results of the DNA report, which excluded S-E- as the petitioner’s biological father, and the I-485 application was denied based on the denial of the I-130 petition. On November 6, 2007, the petitioner was served with a Notice to Appear for

¹ Name withheld to protect individual’s identity.

removal proceedings. The petitioner remains in proceedings before the Baltimore, Maryland Immigration Court. On April 18, 2008, the petitioner married [REDACTED], a U.S. citizen, in Lawrenceville, Gwinnett County, Georgia. On October 10, 2008, [REDACTED] filed an I-130 petition on behalf of the petitioner, which was approved on March 17, 2009.

The petitioner filed this Form I-360 on March 30, 2009. The director denied the petition on February 5, 2010, finding that the petitioner is married and thus no longer qualifies as a "child" for immigration purposes. The director also found that the petitioner did not establish that she had the requisite qualifying relationship with a citizen of the United States, as the GenQuest DNA Analysis Laboratory of the University of Nevada School of Medicine, in its Paternity Evaluation Report dated March 25, 2005, determined that S-E-, the alleged batterer/U.S. parent, was not her biological father.

The AAO acknowledges counsel's assertions on appeal that the petitioner is eligible for the classification because, although she is married, she is going through a divorce, and because she has contested the results of the DNA testing. A petitioner, however, must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In this matter, the petitioner was already married at the time of filing, and thus does not meet the definition of "child," as defined above. Also, at the time of filing, the GenQuest DNA Analysis Laboratory, in its March 25, 2005 Paternity Evaluation Report, had already determined that S-E- was not petitioner's biological father. Accordingly, we concur with the director's determination that the petitioner did not establish that she qualifies as a "child," pursuant to section 101(b)(1) of the Act, and that she had a qualifying relationship with a citizen of the United States, pursuant to section 204(a)(1)(A)(iv) of the Act. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Act and her petition must be denied.

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.