

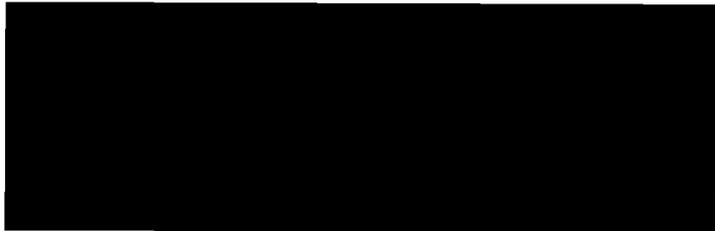
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

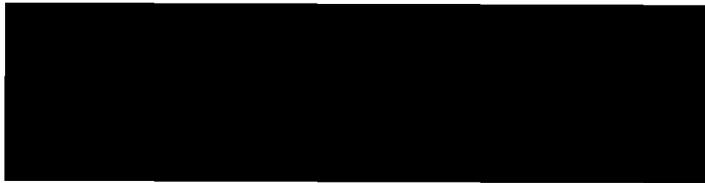
Date: **DEC 22 2010**

IN RE:



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:



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.

Thank you,

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 sustained.

The petitioner seeks immigrant classification under 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 child battered or subjected to extreme cruelty by her mother, a citizen of the United States.

The director denied the petition on the basis of his determination that because the petition was filed after the petitioner reached the age of 21, and the petitioner did not demonstrate that her mother's abuse was a central reason for her delay in filing the petition, she had failed to establish the existence of a qualifying parent-child relationship with a citizen of the United States. On appeal, counsel submits an appellate brief reasserting the petitioner's eligibility, a psychiatric evaluation of the petitioner, and copies of previously-considered documentation.

Applicable Law

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

An alien who is the child of a citizen of the United States, or who was the 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 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 [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. . . .

In 2005, Congress amended the self-petitioning provisions for abused children to extend eligibility to individuals who failed to file before turning 21 due to the abuse. Section 204(a)(1)(D)(v) of the Act states, in pertinent, the following:

For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. . . .

Section 204(a)(1)(J) of the Act further states:

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].

Pertinent Facts and Procedural History

The petitioner is a citizen of Guatemala who was born in that country on June 29, 1984. The record indicates that she entered the United States without inspection as an infant.

The petitioner filed the instant Form I-360 on December 12, 2007, when she was 23 years old. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to his requests for additional evidence, the director denied the petition on June 18, 2010. As noted, in his decision denying the petition the director found that the petitioner had failed to establish that her mother's abuse was a central reason for the petitioner's failure to file the petition before reaching the age of 21 and, as such, had failed to demonstrate the existence of a qualifying parent-child relationship.

On appeal, counsel asserts that the petitioner has established that the abuse to which the petitioner was subjected by her mother was in fact a central reason for the delay in filing the petition and that, as such, she remains eligible for immigrant classification pursuant to the late-filing provisions at section 204(a)(1)(D)(v) of the Act.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has overcome the director's ground for denying this petition.

The Petitioner is Eligible under the Self-Petitioning Provisions for Children as Amended in 2005

The petitioner has established that she qualified for classification under section 204(a)(1)(A)(iv) of the Act before turning 21: her mother is a citizen of the United States, and the record demonstrates that petitioner resided with her mother and was abused by her. The record also demonstrates that the petitioner is a person of good moral character. The sole issue before the AAO on appeal, therefore, is whether the petitioner has established that the abuse to which she was subjected by her mother was at least one central reason for the filing delay. The petitioner has made that demonstration on appeal.

In her October 7, 2008 self-affidavit submitted at the time she filed the petition, the petitioner stated that she suffered child abuse and neglect by her mother, and physical, sexual, and emotional abuse by other family members, all of which led her to be placed into the custody of the Massachusetts

Department of Social Services (DSS) at a young age, and that her failure to file the petition before her twenty-first birthday was directly connected to that abuse. According to the petitioner, she has worked very hard to heal from the pain through which she lived, and that the abuse to which she was subjected took a heavy emotional and physical toll on her. She stated that that she has only recently been stable enough to sit with an immigration attorney, discuss the abuse to which she was subjected, and realize her eligibility to file this petition.

With regard to the abuse to which she was subjected, the petitioner stated that although the details of specific instances of abuse are very painful to remember, she knows she was beaten severely, and that such beatings caused bruises and cuts. She submitted voluminous documentation from the DSS and related organizations dating to 1991 regarding the abuse to which she was subjected.

The petitioner offered further elaboration in her February 17, 2010 self-affidavit. She stated that she spent most of her childhood in the custody of the State of Massachusetts as a result of the abuse to which she was subjected by her mother and other members of the family. According to the petitioner, she has been diagnosed with Posttraumatic Stress Disorder (PTSD), depression, and bipolar disorder, and has attempted suicide on multiple occasions. The petitioner described childhood experiences during which she was burned with cigarettes, hit, cut, and yelled at. She also stated that she was raped by her brother on multiple occasions. After being removed from her mother's custody and being placed in foster care, she was sexually abused and, on one occasion, raped in a dumpster.

With regard to her immigration processing, she stated that after her mother achieved permanent resident status, both the petitioner and her caseworker were under the impression that the petitioner would eventually receive legal status through her mother. The petitioner stated that despite everything that had occurred, she trusted that what her mother had told her was correct. However, after she reached the age of 21 she was told she had "aged-out" and could no longer receive benefits through her mother.

In an August 14, 2010 psychiatric evaluation submitted on appeal, [REDACTED], [REDACTED], discussed the abuse to which the petitioner was subjected, diagnosed her with PTSD and major depression, and described how the effects of that abuse led to the delay in filing the petition. According to [REDACTED] the petitioner's depression, PTSD, lingering effects of institutionalization, low self-esteem and confidence, immaturity, poor social skills, and inadequate problem-solving skills interfere with many aspects of her life, including her ability to make choices for herself. With regard to the filing delay, [REDACTED] stated that she found credible the petitioner's statement that she believed her mother was filing her immigration paperwork. According to [REDACTED], "[a]s indicated in her past and present behavior, to rely on others to formulate a necessary plan and take necessary steps is consistent behavior for [the petitioner]." As discussed in [REDACTED] report and established by other evidence of record, this reliance on others for structure and routine is typical post-institutional behavior, and the record clearly shows that the petitioner's mother's abuse was the reason for her institutionalization and multiple foster care placements. [REDACTED] also found the effects of PTSD and chronic major depression, the

effects of head injuries, immaturity, lack of support and resources, and the lingering effects of institutionalization to be significant factors explaining the filing delay, and stated that the combination of these factors rendered her incapable of properly handling something as complicated as filling out the correct immigration forms. [REDACTED] stated that even if she had not relied upon her mother, "it would [have been] impossible for [the petitioner], in her mental state[,] . . . to have investigated her immigration possibilities and take necessary steps to remedy her immigration status. [The petitioner's] thought process is that disorganized and impaired."

Counsel further discusses the abuse to which the petitioner was subjected during her childhood and adolescence in her appellate brief. She states that the petitioner continues to suffer from chronic major depression and PTSD as a result of the abuse to which she was subjected as well as the ongoing effects of the institutionalization she experienced as a result of that abuse. Counsel notes that the petitioner is not required to establish that the abuse to which she was subjected was the only reason for the filing delay; she need only establish that it was a central reason for the delay. Counsel argues that the evidence of record establishes clearly that "the long-standing effects of the abuse suffered by [REDACTED] and the effects of her extended institutionalization as a result of that abuse were a central reason for her inability to file her papers in a timely manner."

Upon review of the entire record, we find that, when considered in the aggregate, the relevant testimonial and documentary evidence establishes that the abuse to which she was subjected by her mother was one central reason for the petitioner's failure to file the petition before her twenty-first birthday. The evidence of record is probative, detailed, and credible, and establishes that both the abuse itself as well as the aftermath of the abuse, including the ongoing effects of PTSD, chronic major depression, and post-institutionalization prevented the petitioner from filing this petition before she reached the age of 21. As the petitioner has established that the abuse to which he was subjected by her mother constituted at least one central reason for her failure to file this petition before her twenty-first birthday, she has satisfied section 204(a)(1)(D)(v) of the Act. Accordingly, the petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act and the director's contrary determination is hereby withdrawn. The appeal will be sustained and the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden and the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.