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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



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FILE:

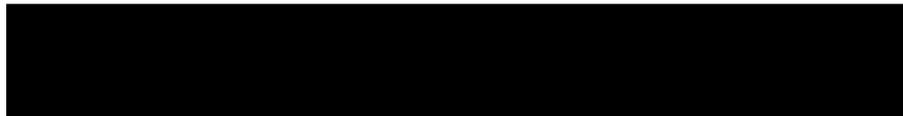


Office: VERMONT SERVICE CENTER

Date: NOV 08 2010

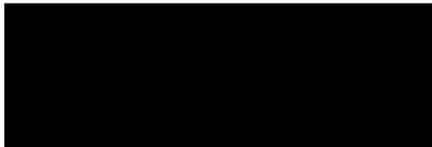
IN RE:

Petitioner:



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.

Thank you,

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 sustained. The petition will be approved.

The petitioner is a native and citizen of Mexico 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 because, at the time of filing, the petitioner had reached 21 years of age and did not establish that the abuse was a central reason for the filing delay. The director determined that the petitioner therefore did not establish that he had a qualifying relationship as the child of a United States citizen and that he was eligible for immigrant classification based upon that relationship.

On appeal, counsel for the petitioner submits a statement.

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 . . .

Section 204(a)(1)(D)(v) states:

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. . . .

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who was born on [REDACTED] 1986, and claims to have entered the United States on June 19, 1987, without inspection. On January 7, 1995, the petitioner's father married [REDACTED]

¹, a U.S. citizen in the Bronx, New York. On August 25, 2008, the petitioner's father and [REDACTED] were divorced in the Superior Court of New Jersey.²

The petitioner turned 21 on January 8, 2007, and filed this Form I-360 on October 25, 2007. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On January 11, 2010, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character and the connection between the abuse and late filing. The director also requested information regarding the current marital status of the petitioner's father and [REDACTED]. The petitioner, through former counsel, responded to the RFE with additional evidence. The director denied the I-485 application on March 17, 2010. The director denied the instant petition on March 18, 2010, because the petitioner had reached 21 years of age and did not establish that the abuse was a central reason for the filing delay. The director concluded that the petitioner therefore did not establish a qualifying relationship as the child of a United States citizen and eligibility for immigrant classification based upon that relationship.

On appeal, counsel for the petitioner asserts that the petitioner is eligible for the classification because the medical reports and the petitioner's own statements show "that the abuse was at least one factor in the ten month delay in filing the self-petition."

The record contains a personal affidavit from the petitioner dated January 19, 2010, submitted in response to the RFE, in which he states, in part, that he started living with his stepmother, [REDACTED] when he was eight years old. The petitioner describes in detail numerous incidents of abuse by [REDACTED], including name calling, humiliation, and physical and sexual abuse. The petitioner states that he wakes up at night and screams because he believes that his stepmother is coming to hurt him. In response to the director's inquiry on the delay in filing his petition, the petitioner states: "I did not know how and did not have the monies to seek legal help."

The record also contains a psychological report dated November 20, 2007, from Dr. [REDACTED] American Board of Professional Psychology, licensed in New Jersey, who states, in part, that he evaluated the petitioner on November 14, 2007. Dr. [REDACTED] states that the abuse suffered by the petitioner resulted from his stepmother's alcoholism, and that the abuse was continuous and serious. Dr. [REDACTED] also states that the petitioner "has responded to this abuse by being overly dependent on his father." Dr. [REDACTED] diagnoses the petitioner with "Major Depressive Disorder, Single Episode, Chronic" and "Post-traumatic Stress Disorder, Chronic" and recommends ongoing treatment.

The record contains a second report from Dr. [REDACTED] dated January 28, 2010, in which he states, in part, that the petitioner told him that the delay in filing his application was due to his dependence "on his father to guide him in his petition for permanent residence and the father made this petition as soon as his life stabilized sufficiently so that he could address this matter after the

¹ Name withheld to protect individual's identity.

² Docket No. [REDACTED]

separation.” Dr. [REDACTED] also states that the petitioner continues under his care on a monthly basis to address the consequences of the petitioner’s abuse.

Upon review of the record in its entirety, we find that petitioner has established that the abuse was a central reason for the filing delay. The petitioner became overly dependent on his father, relied upon him for guidance in filing his petition, and has continued to attend therapy sessions to address his abusive relationship with his stepmother. The petitioner, therefore, has shown that he meets the requirements of section 204(a)(1)(D)(v) of the Act and consequently has established that he had a qualifying relationship with a citizen of the United States and that he was eligible for immigrant classification based upon that relationship, pursuant to section 204(a)(1)(A)(iv) of the Act. He is thus eligible for immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Act and his petition will be approved.

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 been met. Accordingly, the appeal will be sustained.

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