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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
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FILE:



Office: VERMONT SERVICE CENTER

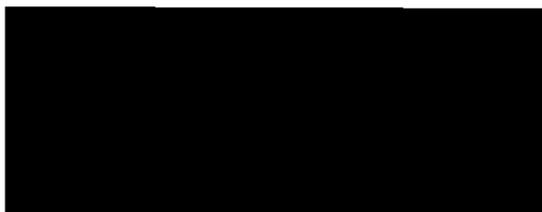
Date: NOV 29 2010

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)

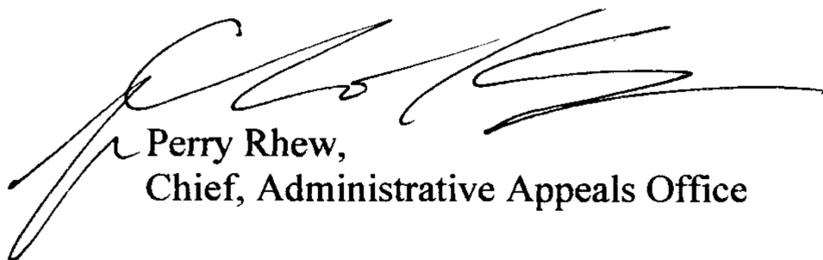
ON BEHALF OF PETITIONER:



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 his United States citizen stepparent.

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 his stepfather's abuse was a central reason for his delay in filing the petition, he had failed to establish the existence of a qualifying parent-child relationship with a United States citizen. On appeal, counsel submits a letter reasserting the petitioner's eligibility, and additional testimonial evidence.

Applicable Law

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines a child as, in pertinent part:

an unmarried person under 21 years of age who is . . . (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred[.]

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 a child of a United States citizen parent who within the past two 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 [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] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

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 Mexico who was born in that country on [REDACTED] 1984. His mother married [REDACTED] a citizen of the United States, on August 28, 1995, and the petitioner entered the United States without inspection in or around November 1998.

In September 2006, after the petitioner had reached the age of 21, his mother filed a Form I-360 self-petition based upon her relationship to [REDACTED] and his abuse.² It was approved on April 30, 2007. The petitioner filed the instant Form I-360 on December 4, 2007, when he was 23 years old. The director issued two subsequent requests for additional evidence to which the petitioner, through prior counsel, submitted timely responses. After considering the evidence of record, the director denied the petition on June 23, 2010. As noted, in his decision denying the petition the director found that the petitioner had failed to establish that [REDACTED] 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 [REDACTED] was a central reason for the delay in filing the petition and that, as such, the petitioner 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.

¹ Name withheld to protect individual's identity.

² See Form I-360, [REDACTED]

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

The petitioner has established that he qualified for classification under section 204(a)(1)(A)(iv) of the Act before turning 21: [REDACTED] is a U.S. citizen and he and the petitioner's mother married when the petitioner was eleven years of age, and he therefore met the definition of a "child" at section 101(b)(1)(B) of the Act; and the record demonstrates that he resided with [REDACTED] and was abused by him. The sole issue before the AAO on appeal, therefore, is whether the petitioner has established that the abuse to which he was subjected by [REDACTED] was at least one central reason for the filing delay. The petitioner has made that demonstration.

In the undated declaration he submitted at the time he filed the petition, the petitioner stated that, in addition to hitting her, [REDACTED] told the petitioner's mother that she and the children were "illegals" and that they had no rights. The petitioner stated further that on evenings on which his mother worked late, [REDACTED] sent him to bed without dinner and pushed him to the floor when he tried to get out of his bedroom to get food. The petitioner stated that when he told [REDACTED] he was going to tell his teachers and the police that he was not being permitted to eat, [REDACTED] told him that if he did so, he would have the family deported. The petitioner stated further that [REDACTED] did not allow the family to speak to relatives in Mexico or anyone else outside of school. The petitioner also recounted an incident during which [REDACTED] fell asleep while driving. According to the petitioner, his mother told [REDACTED] that if he completed their immigration processing she could get a driver's license and help him, but [REDACTED] told her that he wanted them to be in the United States illegally forever so that they would have to be dependent upon him.

The petitioner's mother also described the control [REDACTED] exerted over the family in her August 3, 2006 declaration, which the petitioner submitted on appeal. She stated that [REDACTED] accused her of cheating, and told her that he would kill himself if she ever left him. According to the petitioner's mother, [REDACTED] was only happy if he knew exactly where she was and what she was doing there. She stated that, eventually, [REDACTED] was deciding what she would wear each day. She had an ectopic pregnancy in 1997, and was told by the doctor to wait at least two weeks before engaging in sexual relations. However, [REDACTED] refused to wait, and forced her to have sex the day she returned home from the hospital. The petitioner's mother also described several other incidents of battery in probative detail.

The petitioner also submitted a letter from his sister describing the control [REDACTED] exerted over the family. In her February 4, 2010 letter, she stated that [REDACTED] did not permit anyone other than himself to drive, including their mother. She stated that because [REDACTED] did not let the petitioner work or drive, he had no way of going behind [REDACTED] back to seek help or legal counsel, and the family lived with the constant fear of knowing their future in the United States depended solely upon [REDACTED]. She stated that when their mother and [REDACTED] finally separated in 2006, everyone was still living under the same roof, even though she and [REDACTED] were both of age. Even after they started working, [REDACTED] still drove the petitioner and his sister to and from their places of employment. According to the petitioner's sister, it was only after [REDACTED] was sentenced to four years in jail that they felt more at ease and their mother had the courage to file a Form I-360 based upon the abuse to which she was

subjected by [REDACTED] However, because he was by then 22 years of age, the petitioner no longer qualified to file as her minor dependent.

Upon review of the entire record, the AAO finds that, when considered in the aggregate, the relevant testimonial and documentary evidence establishes that the abuse to which he was subjected by [REDACTED] constituted at least one central reason for the petitioner's failure to file the petition before his twenty-first birthday. The testimonial evidence of record is probative, detailed, and credible, and establishes that [REDACTED] maintained tight control over the petitioner until well after his twenty-first birthday, and the documentary evidence of record, which includes a copy of a police report and a domestic abuse protection order, supports the testimonial evidence discussed above. As the petitioner has established that the abuse to which he was subjected by [REDACTED] constituted at least one central reason for his failure to file the petition before his twenty-first birthday, he 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 determination to the contrary is hereby withdrawn. The appeal will be sustained and the 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. The petitioner has sustained that burden and the petition will be approved.

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