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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:

SEP 20 2010

IN RE:

ELIO EDEL ZAPOTE-CORTES

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:



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,

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien child battered or subjected to extreme cruelty by his U.S. lawful permanent resident parent.

The director determined that the petitioner had not demonstrated that he resided with his former stepfather or that his former stepfather subjected him to battery or extreme cruelty. The director also found that the petitioner had not established that the battery or extreme cruelty was one central reason for the petitioner's failure to file the petition before turning 21. The petition was denied on these three grounds.

On appeal, counsel submits additional evidence which establishes that the petitioner resided with his former stepfather who subjected him to extreme cruelty. Counsel's claims and the evidence submitted on appeal do not, however, demonstrate that the extreme cruelty was one central reason for the delay in filing the petition.

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)(B)(iii) of the Act provides, in pertinent part, that an alien who is the child of an alien lawfully admitted to permanent residence and who is a person of good moral character, who is eligible for classification as a preference immigrant under section 203(a)(2)(A) of the Act, and who resides, or has resided in the past, with the permanent resident alien parent may file a petition with the Attorney General (now Secretary of Homeland Security) for classification of the alien (and any child of the alien) as a preference immigrant 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 permanent resident parent.

Section 204(a)(1)(D)(v) of the Act provides a late-filing waiver for individuals meeting the following requirements:

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 states, in pertinent part:

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].

The regulation at 8 C.F.R. § 204.2(e)(2)(i) further states:

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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of Mexico who was born on [REDACTED]. The petitioner states that he entered the United States without inspection in 1997. In 2001, when he was 15 years old, his mother married J-M<sup>1</sup>, a lawful permanent resident of the United States. J-M- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which he later withdrew. The petitioner's mother and his stepfather divorced on December 19, 2006 when the petitioner was 20 years old. The petitioner filed the instant Form I-360 on December 8, 2008 when he was 22 years old.

With the Form I-360, the petitioner submitted no evidence that he had resided with his former stepfather, that his former stepfather had abused him and that the abuse was a central reason for his failure to file the petition before his twenty-first birthday. Accordingly, the director denied the petition on these three grounds.

On appeal, counsel asserts that the petitioner has established the requisite abuse and joint residence based on the additional evidence submitted on appeal in this case, and previously submitted with the self-petitions of the applicant's mother and sister, which were approved.<sup>2</sup> Counsel further claims that the petitioner did not file earlier because he was unaware that it was possible to apply for legal status without threat of deportation from his abusive stepfather.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, establishes that the petitioner's former stepfather subjected him to extreme cruelty during the time he was married to the petitioner's mother. On appeal, counsel submits the statements of the petitioner, his mother and sister, as well as supporting affidavits from two individuals who witnessed incidents of abuse. The

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

<sup>2</sup> The petitioner's mother's Form I-360 ([REDACTED]) was approved on April 5, 2010. The petitioner's sister's Form I-360 ([REDACTED]) was approved on March 3, 2010. The petitioner's sister was under 21 when her self-petition was filed.

statements of the petitioner, his mother and sister recount in probative detail the petitioner's former stepfather's physical, sexual and verbal abuse of the petitioner's mother, including incidents which occurred in the presence of the petitioner or were also directed at the petitioner. The preponderance of the evidence submitted on appeal thus establishes that the petitioner's stepfather subjected him to extreme cruelty, as required by section 204(a)(1)(B)(iii) of the Act.

On appeal, the petitioner also submits evidence that he resided with his former stepfather. In addition to the testimony of the petitioner, his mother and sister, the record contains copies of the petitioner's and his sister's school records and his former stepfather's 2002 federal income tax return listing the petitioner as his dependent. Accordingly, the preponderance of the evidence submitted on appeal demonstrates that the petitioner resided with his stepfather, as is also required by section 204(a)(1)(B)(iii) of the Act.

Although the petitioner has overcome these two grounds for denial of the petition, the appeal may not be sustained because the petitioner has not shown that his former stepfather's abuse was a central reason for his failure to file the petition before his twenty-first birthday. On the Form I-360, the petitioner stated that he ceased living with his former stepfather in April 2003. In his January 15, 2010 statement, the petitioner explains that his mother "finally got the courage to pack our things and leave" his former stepfather's home. He recounted that they moved to a terrible neighborhood and at first he was afraid that his former stepfather would come and hurt them, but as time passed, he "felt safer in that dangerous neighborhood, locked in our apartment, than [he] felt when [they] lived with [his stepfather]." Neither the petitioner, his mother nor his sister indicate that they had any further contact with his former stepfather after they moved out of his home.

While the abuse need not be the predominant cause of the filing delay, it must be "at least one central reason" for the delay. *See* Section 204(a)(1)(D)(v) of the Act. On appeal, counsel claims that the abuse was a central reason in the filing delay because the petitioner, his mother and sister "lived in fear of their abuser making good on his threats of call[ing] Immigration and having them deported" and that it "was not until [the petitioner] was placed in removal proceedings and consulted an attorney that they learned it was possible to apply for legal status without threat of deportation from their abuser." Counsel fails to articulate, however, any nexus between the petitioner's former stepfather's abuse and the filing delay. The record indicates that the petitioner escaped his former stepfather's abuse over five years before this petition was filed. The petitioner, his mother and sister do not indicate that they had any further contact with his former stepfather or that he continued to threaten them during those five years. While it is unfortunate that the petitioner was unaware of the self-petitioning provisions before his twenty-first birthday, the statute does not encompass such lack of knowledge within the late-filing provisions. As the petitioner has not demonstrated that his former stepfather's abuse was at least one central reason for his filing delay, he is ineligible for the late-filing waiver at section 204(a)(1)(D)(v) of the Act. He consequently no longer meets the definition of a child at section 101(b)(1)(B) of the Act and is ineligible for immigrant classification as the abused child of a lawful permanent resident under section 204(a)(1)(B)(iii) of the Act.



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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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.