

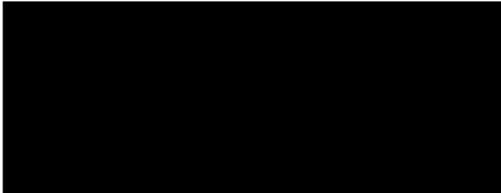
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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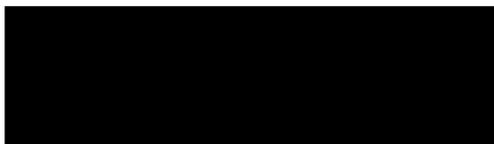
APR 18 2011

IN RE:

Petitioner:

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 \$630. 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 Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The petition remains denied.

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 denied the petition, after determining that the applicant had not established that he is a person of good moral character. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion.

#### *Applicable Law and Regulations*

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)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , 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) states, in pertinent part:

#### *Self-petition by child of abusive citizen or lawful permanent resident--Eligibility.*

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law.

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

#### *Pertinent Facts and Procedural History*

The petitioner is a native and citizen of Mexico who entered the United States on or about February 2, 1989. The petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on February 19, 2009. The petitioner's date of birth is October 7, 1988. The petitioner states on the Form I-360 that he resided with the claimed abusive parent from February 1989 to July 1996. The director issued a request for evidence (RFE) on January 7, 2010. Upon review of the record, including the petitioner's response to the RFE, the director denied the petition on August 3, 2010. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, checking the box indicating that a brief and/or evidence would be submitted within 30 days. To date, the record includes no further evidence. The record is considered complete.

The director found that the petitioner was convicted on December 1, 2008 for a Class "A" Assault and sentenced to 365 days incarceration. The director determined that the petitioner was an aggravated felon as defined in section 101(a)(43)(F) of the Act and thus was ineligible for any immigration benefits.

On the Form I-290B, counsel for the petitioner asserts that the petitioner's crime and conviction is not for an aggravated felony.

#### *Summary Dismissal*

The director in this matter determined that the petitioner's conviction in December 2008 for a Class "A" Assault and sentence of 365 days incarceration is an aggravated felony and thus, the petitioner had not established that he is a person of good moral character pursuant to section

101(f) of the Act. We find no error in the director's assessment of the relevant evidence. Neither counsel nor the petitioner provides any further evidence or argument on appeal that overcomes the director's decision. Neither counsel nor the petitioner identifies specifically an erroneous conclusion of law or a statement of fact in this proceeding. Accordingly, the appeal must be summarily dismissed pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

*Conclusion*

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.

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