

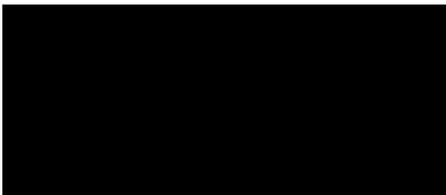
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B9

Date: **APR 26 2011**

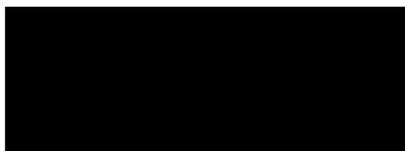
Office:

FILE:

IN RE: Petitioner:

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.

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, ██████████ Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition remains denied.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by her United States citizen stepparent.

The director denied the petition on February 8, 2006, determining that the petitioner had not established a qualifying relationship at the time of filing the petition. The petitioner filed an appeal of the director's adverse decision. On November 22, 2006, the AAO remanded the matter for issuance of a Notice of Intent to Deny (NOID) the petition, as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ On February 4, 2008, the director issued a NOID and the petitioner provided a response. Upon review of the record, including the petitioner's response to the NOID, the director denied the petition and certified his decision to the AAO on November 15, 2010. The certification notified the petitioner that she had an opportunity to supplement the record on certification. To date, no further evidence or argument has been submitted. The record is considered complete.

Applicable Law and Regulations

Section 204(a)(1)(A)(iv) of the Act provides 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) of the Act 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.

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.

After the instant petition was filed, Congress amended the self-petitioning provisions for abused children. Section 204(a)(1)(D)(v) of the Act now provides a late-filing waiver for individuals

¹ On April 17, 2007, United States Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

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)(D)(v) of the Act, 8 U.S.C. § 1154(a)(1)(D)(v), as added by section 805(c) of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (Jan. 5, 2006) and amended by section 6(a), Act of August 12, 2006, Pub. L. No. 109-271, 120 Stat. 750.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of [REDACTED] who was born on November 25, 1984. The petitioner entered the United States on or about December 24, 2001 as a B-2 visitor. The record shows that the petitioner's biological mother married T-B-², the claimed abusive citizen stepparent when the petitioner was twelve years old. Although the petitioner initially attempted to submit her Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on October 17, 2005, in a notice dated November 17, 2005, the petitioner was informed that the petition was not accepted for filing due to the lack of an original signature. The petition was resubmitted and stamped as received by the director on December 16, 2005. In the interim, on November 25, 2005, the petitioner turned 21 years of age. As the petitioner was over 21 years of age at the time of filing, the director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship as the child of a United States citizen at the time of filing.

On appeal, counsel for the petitioner asserted that the initial Form I-360 submission should have been accepted by the director; or, in the alternative, that the petitioner remained eligible for a late-filing waiver pursuant to section 204(a)(1)(D)(v) of the Act. The AAO determined that the director's rejection of the initially submitted Form I-360 was within the director's authority and that the initial attempt to submit the Form I-360 did not retain a filing date. The AAO also found that section 204(a)(1)(D)(v) of the Act came into effect after the filing of the Form I-360 petition and that the statutory provision did not indicate that it applied retroactively to petitions that were pending at the time the law was enacted; thus, the petitioner in this matter was not eligible for the late-filing waiver. Although the AAO concurred with the director's ultimate decision in the matter, the matter was remanded for the issuance of a NOID pursuant to the regulation existing at the time the petition was filed. Upon remand, the director issued the required NOID on February 4, 2008 and the petitioner, through counsel submitted a statement setting forth the same

² Name withheld to protect the individual's identity.

arguments as submitted on appeal. On November 15, 2010, the director denied the petition and certified his decision to the AAO for review.

The Petitioner was not a Child When the Form I-360 was Filed and is not Eligible for the Late Filing Provision at section 204(a)(1)(D)(v) of the Act

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further relevant evidence or legal brief on certification demonstrating that the director's November 15, 2010 decision, based on the AAO's November 22, 2006 remand decision, was in error. The petitioner did not meet the definition of a child at section 101(b)(1)(B) of the Act when she filed the Form I-360 as she was over the age of 21. The late-filing waiver provision at section 204(a)(1)(D)(v) of the Act is also inapplicable to the instant petition because it was filed before this statutory provision went into effect on January 5, 2006 and the law was not retroactive.³ Accordingly, the petitioner has failed to demonstrate that she had a qualifying relationship with her U.S. citizen parent at the time the instant petition was filed and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act.

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. Accordingly, the November 15, 2010 decision of the director is affirmed and the petition remains denied.

ORDER: The director's decision of November 15, 2010 is affirmed. The petition remains denied.

³ As noted in our prior decision, the late-filing waiver provision at section 204(a)(1)(D)(v) of the Act applies to any self-petition filed on or after its effective date of January 5, 2006 and before the petitioner attained 25 years of age. The record shows that the petitioner filed a subsequent Form I-360 (receipt number EAC 08 223 50168), which was filed on July 24, 2008 when the petitioner was 23 years old and remains pending before the Vermont Service Center.