

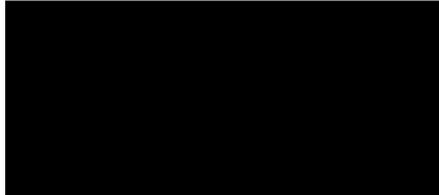
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



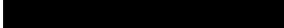
**U.S. Citizenship  
and Immigration  
Services**



Bq.

Date: **APR 26 2011**

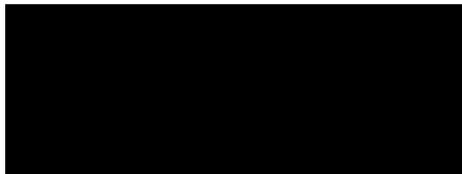
Office: 

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:

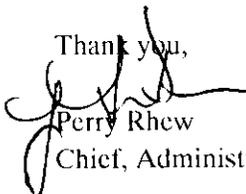


INSTRUCTIONS:

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, [REDACTED] Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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 July 20, 2010, determining that the petitioner had not established a qualifying relationship as a child of the claimed abusive United States citizen and had not established that she is a person of good moral character. On appeal, counsel submits a brief and documentation relating to the petitioner's good moral character.

#### *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.

The eligibility requirements are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* 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.

\* \* \*

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

*Pertinent Facts*

The petitioner is a native and citizen of [REDACTED] who was born on May 15, 1986. The petitioner entered the United States on or about December 21, 1996 as a B-2 visitor. The record shows that

the petitioner's biological mother married M-D-<sup>1</sup>, the abusive citizen stepparent, on October 7, 2004, after the petitioner turned 18 years old. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on December 1, 2009. The director issued a request for evidence (RFE) on March 10, 2010. Upon review of the evidence of record, including the petitioner's response to the RFE, the director denied the petition, determining that the petitioner did not meet the definition of "child" at section 101(b)(1) of the Act, as she had turned 18 when the marriage creating the stepparent/stepchild relationship occurred. The director also determined that the petitioner's local police clearances were out-of-date and thus she also had not established that she is a person of good moral character.

### *Good Moral Character*

On appeal, counsel for the petitioner submits current police clearances sufficient to establish that the petitioner is a person of good moral character. The director's decision on this issue is hereby withdrawn.

### *Qualifying Relationship*

On appeal, counsel asserts that: the petitioner's stepfather proposed to her mother in February 2004; the petitioner's mother and her stepfather began to cohabit and portray themselves as husband and wife; and the petitioner began to acknowledge M-D- as her stepfather. Counsel contends that [REDACTED] Law defines a "stable union" as a relationship that is recognized and known. Counsel attaches a webpage printout in support of this proposition. Counsel avers that during the petitioner's mother and stepfather's "common law" marriage, the petitioner was subjected to inappropriate verbal and physical abuse from her stepfather. Counsel attaches additional personal statements from the petitioner and her mother in support of this claim. Counsel observes that the petitioner has already detailed the abuse she suffered after the legal marriage and claims that the petitioner has thus met her burden of proof and established eligibility as an abused child of a U.S. citizen.

The State of [REDACTED], the location in which the couple resided prior to their marriage does not recognize common law marriage,<sup>2</sup> and the domestic relations laws of Brazil are not relevant in this matter, as the petitioner and M-D- were married in the United States. The petitioner was over the age of 18 when her biological mother married M-D-; thus she did not meet the definition of "child" at section 101(b)(1) of the Act when the stepparent/stepchild relationship was created. Accordingly, the petitioner has failed to establish that she had a qualifying relationship as the child of a United States citizen, and she is ineligible for immigrant classification as the abused child of a United States citizen under section 204(a)(1)(A)(iv) of the Act.

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

<sup>2</sup> See N.J. STAT. ANN. Title 37 (Marriage and Married Persons) (West 2011)

*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 dismissed. The petition remains denied.