

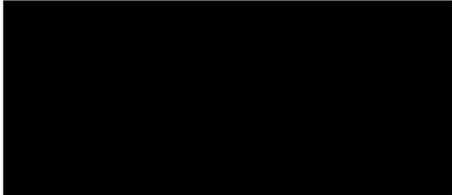
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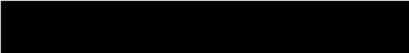
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: **AUG 18 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] denied the immigrant visa petition. The matter is now before the Administration Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision, in part, and affirm in part. The appeal will be dismissed and the petition will remain 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 his United States citizen stepparent.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent because the petitioner's mother and former stepfather divorced before the petition was filed. The director also found that the petitioner did not establish that his former stepfather's abuse was one central reason for his failure to file his petition before his twenty-first birthday. Counsel timely submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating that no further evidence or brief would be submitted. The record is considered complete.

Applicable Law

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, 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), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General 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.

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:

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].

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner was born in [REDACTED] on May 15, 1986. The petitioner's biological mother married J-B-¹, the claimed abusive United States citizen on September 5, 2003 in the State of [REDACTED] when the petitioner was 17. On February 7, 2007, the petitioner entered the United States on a K-4 visa and resided with his biological mother and stepfather from February 2007 until August 2007. On August 26, 2008 a Decree of Divorce was entered terminating the marriage between the petitioner's biological mother and stepfather and the Decree of Divorce was filed in [REDACTED] on September 30, 2008. On December 29, 2008, after the petitioner had turned 21, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a request for evidence (RFE) on January 8, 2010. Upon review of the record, including the petitioner's response to the RFE, the director denied the petition determining that a qualifying relationship did not exist between the petitioner and his stepfather when the petition was filed on December 29, 2008. The director also determined that the petitioner had not established that the central reason for his delay in filing the petition after he had turned 21 was due to the abuse perpetrated by J-B- against him.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal or Motion, and in a statement on the Form I-290B asserts that Congress did not intend to punish children abused by stepparents because the biological parent took steps to get away from the abusive relationship. Counsel contends that the provision that allows a self-petitioning spouse to file a Form I-360 within two years after an abusive relationship has been dissolved should be extended to a self-petitioning child. Counsel also notes that the abuse perpetrated against the petitioner by J-B- was ongoing at the time of his twenty-first birthday and that J-B- threatened the petitioner and his family that if they reported the abuse to the police they would be deported.

¹ Name withheld to protect the individual's identity.

The Petitioner had a Qualifying Relationship with his Former Stepfather

The director improperly required that the petitioner establish the existence of a qualifying relationship between the petitioner and his stepfather when the petition was filed on December 29, 2008. No such requirement exists, however, as section 204(a)(1)(D)(v) of the Act clearly states that self-petitioners over 21 “who qualified to file a petition under subparagraph (A)(iv)” as of the day before they turned 21, but did not then file “shall be treated as having filed a petition under such subparagraph” if the self-petitioner files before turning 25 and “shows that the abuse was at least one central reason for the filing delay.” 8 U.S.C. § 1154(a)(1)(D)(v). Accordingly, individuals who met all the eligibility requirements for self-petitioning abused children, including a qualifying relationship with a U.S. citizen parent, as of the day before their twenty-first birthday do not lose eligibility after that date provided they meet the additional requirements to excuse a late filing.

In this matter, the petitioner has established that he qualified for classification under section 204(a)(1)(A)(iv) of the Act as of the day before he turned 21. The record shows that the petitioner’s former stepfather is a U.S. citizen. The petitioner’s mother and former stepfather married when he was 17 years old and he consequently met the definition of a “child” at section 101(b)(1)(B) of the Act. The petitioner resided with his biological mother and stepfather from February 2007 until August 2007. The evidence in the record establishes that the petitioner was subjected to battery and extreme cruelty prior to reaching his twenty-first birthday. Thus, the record is sufficient to establish that the petitioner is eligible as a self-petitioning child, as he met all the requirements for self-petitioning abused children, including a qualifying relationship with a U.S. citizen parent, as of the day before his twenty-first birthday. The only issue to be determined in this matter is whether the petitioner’s delay in filing his Form I-360 petition subsequent to his twenty-first birthday may be excused.

The Petitioner Has Not Established that the Abuse was One Central Reason for the Filing Delay

In the petitioner’s November 3, 2008 declaration, he declared that he and his family left the household they shared with J-B- on August 28, 2007. The petitioner further declared that he and his family “do not talk or communicate in anyway” with J-B- and that he is glad that he has been able to move away from J-B- and be happy again. The petitioner stated that he has memories of the physical, verbal and emotional abuse inflicted upon him and his family by J-B- since his arrival in February 2007 but that he has now learned that he can accept help from the police and others.

To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a petitioner need not show that the abuse was the only cause for the delay. Rather, to establish that a stepparent’s abuse was “at least one central reason for the filing delay,” the petitioner must demonstrate, by a preponderance of the relevant, credible evidence, a nexus between the abuse and the filing delay that is more than incidental or tangential.

The record does not contain a statement from the petitioner addressing his delay in filing the petition. On appeal, counsel states that the petitioner’s abuse was ongoing when he turned 21, but she fails to provide an explanation for the petitioner’s delay in filing the Form I-360 until

December 2008, over a year after he and his family left his former stepfather's home. Without probative testimony from the petitioner and other relevant evidence regarding his delay in filing the petition, he has not demonstrated that his former stepfather's abuse was at least one central reason for his filing delay. The petitioner is consequently ineligible for the late-filing waiver at section 204(a)(1)(D)(v) 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.

ORDER: The director's decision is withdrawn in part and affirmed in part. The appeal is dismissed and the petition remains denied.