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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



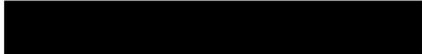
**U.S. Citizenship
and Immigration
Services**



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Date: **AUG 24 2011** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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)

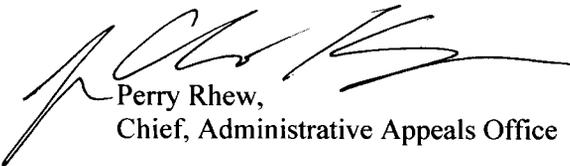
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Thank you,


Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director denied the immigrant petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 father, a lawful permanent resident of the United States and his corresponding eligibility for preference immigrant classification based on such a relationship.

The director denied the petition on the basis of his determination that because the petition was filed after the petitioner reached the age of 21 and the petitioner had not shown that his father's abuse was a central reason for his filing delay, the petitioner had failed to establish a qualifying parent-child relationship with a lawful permanent resident of the United States and corresponding eligibility for preference immigrant classification.

On appeal, the petitioner submits a supplemental brief and his own declaration.

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part, the following:

An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the last 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien 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] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

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, in pertinent, the following:

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].

Pertinent Facts and Procedural History

The petitioner, a citizen of ██████████ was born on January 19, 1985. His father, G-F-, is a lawful permanent resident of the United States.¹ The record indicates that the petitioner entered the United States without inspection at four years of age. The petitioner's father filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf on January 3, 2000, which was approved on July 21, 2004. The petitioner filed the instant Form I-360 on May 26, 2009, when he was 24 years of age. The director issued two subsequent requests for additional evidence to which the petitioner submitted timely responses. After considering the evidence of record and the petitioner's responses to his requests for additional evidence, the director denied the petition on December 13, 2010.² In his decision denying the petition the director found that the petitioner had failed to establish that his father's abuse was a central reason for the petitioner's failure to file the petition before reaching the age of 21 and, as such, had failed to demonstrate the existence of a qualifying parent-child relationship and his corresponding eligibility for immigrant classification as the child of a lawful permanent resident.

On appeal, the petitioner asserts that the delay in filing was related to his father's verbal and physical abuse. The petitioner further asserts that under the Child Status Protection Act (CSPA), the priority date of the Petition for Alien Relative (Form I-130) filed by his father on his behalf should be used in calculating his age at the time of filing his Form I-360 self-petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has overcome the director's ground for denying this petition.

The Petitioner is Eligible under the Late-Filing Provisions for Self-Petitioning Children

Preliminarily, we note that the petitioner's claim regarding the CSPA is misguided. The petitioner asserts that pursuant to the CSPA, the director should have used the priority date of the Form I-130 filed by his father on his behalf to calculate his age at the time of filing his Form I-360. The CSPA amendments to section 204 of the Act do not allow a change in the calculation of the petitioner's age at the time of filing the Form I-360. However, the CSPA amendments codified at section 203(h)(4) of

¹ Name withheld to protect the individual's identity.

² The petitioner was in removal proceedings at the time he filed the Form I-360, and those proceedings were administratively closed on January 6, 2010 after the petitioner received notification that he established a *prima facie* case for classification under section 204(a)(1)(B)(iii) of the Act.

the Act do allow the petitioner to retain the January 3, 2000 priority date of the Form I-130 filed by his father on his behalf.

Upon review of the entire record as supplemented on appeal, the AAO finds that, when considered in the aggregate, the relevant testimonial and documentary evidence establishes that the petitioner's father's abuse constituted at least one central reason for the petitioner's filing delay. To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a self-petitioner need not show that the abuse was the only cause for the delay. Rather, to establish that a parent's abuse was "at least one central reason for the filing delay," the self-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.

In their statements submitted below, the petitioner and his mother discussed in credible, probative detail G-F-'s battery and extreme cruelty to which they were both subjected throughout the petitioner's childhood. In the brief filed on appeal, the petitioner recounted that his father threatened that he would call the "MIGRA" or Border Patrol Officers and have him and his mother deported to [REDACTED]. He recalled that his father's constant verbal abuse made him believe that he couldn't legalize his immigration status in the United States. The petitioner explained that after Immigration and Customs Enforcement (ICE) apprehended him in October 2008, he learned that the attorney his father had hired to represent his immigration matters had withdrawn his representation on July 25, 2007 and the attorney destroyed his file after his father failed to retrieve it. In his supplemental declaration filed on appeal, the petitioner explained that after his mother filed a police report against his father and his father was arrested and jailed for domestic violence, his father became infuriated and refused to further sponsor their immigration.

The record contains a copy of a protective order that was issued to the petitioner's mother on July 5, 2006, restraining the petitioner's father from having contact with her. The protection order was issued after the petitioner's father was convicted of domestic violence. The petitioner was 21 years old at the time of his father's conviction and his parents subsequent separation in 2006.³ The petitioner's mother described in her May 3, 2009 letter the petitioner's role as a "father figure" to her younger children after her separation from his father. In her April 15, 2010 letter, the petitioner's mother further explained that her son financially supported the family because she was unable to work due to back injuries.

On appeal, the petitioner has demonstrated with credible, probative evidence that he resided with his father until he was 21 years old, and during this time period his father controlled him by being physically and verbally abusive, including threats that he would have the petitioner deported. The record indicates that after the petitioner's parents separated, the petitioner took on the additional responsibilities of becoming a father figure to his younger siblings and the family's main financial supporter. The relevant evidence also shows that the petitioner's father refused to further sponsor the petitioner's immigration in retaliation for the petitioner's mother's police report of his domestic

³ The petitioner's mother filed a Form I-360 self-petition on October 19, 2007, when the petitioner was 22 years old. Her petition was approved on December 11, 2008.

violence and the petitioner's ensuing support of his mother. The petitioner filed the instant Form I-360 petition shortly after learning that he was no longer represented by the immigration attorney formerly retained by his father. The petitioner has established that as of the day before his twenty-first birthday, he was eligible to file a petition under section 204(a)(1)(B)(iii) of the Act and that the abuse to which he was subjected by his father constituted at least one central reason for his filing delay. Accordingly, he has satisfied section 204(a)(1)(D)(v) of the Act and remains eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act. The director's contrary determination is hereby withdrawn.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has met that burden. The appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.