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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**

[REDACTED]

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 11 2011

IN RE: [REDACTED]

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:

[REDACTED]

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 service center director denied the immigrant visa 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)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by her by her father, a citizen of the United States.

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 did not demonstrate that her father's abuse was a central reason for her delay in filing the petition, she had failed to establish the existence of a qualifying parent-child relationship with a citizen of the United States. On appeal, counsel submits a memorandum of law reasserting the petitioner's eligibility, a psychiatric evaluation of the petitioner, and additional testimonial evidence from the petitioner.

Applicable Law

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

An alien who is the child of a citizen of the United States, or who was the 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 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 [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 204(a)(1)(D)(v) of the Act further provides:

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 the following:

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 the Philippines, was born on May 6, 1987. Her mother married [REDACTED] a citizen of the United States, on September 21, 1999, and [REDACTED] legally adopted the beneficiary on December 28, 2001.

The petitioner filed the instant Form I-360 on August 25, 2009, when she was 22 years of age. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to his request for additional evidence, the director denied the petition on August 6, 2010. As noted, in his decision denying the petition the director found that the petitioner had failed to establish that her 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.

On appeal, counsel asserts that the petitioner has established that the abuse to which she was subjected by her father was in fact a central reason for her delay in filing the petition and that, as such, she remains eligible for immigrant classification pursuant to the late-filing provisions at section 204(a)(1)(D)(v) of the Act.

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

In their statements submitted below, the petitioner and her mother discussed in credible, probative detail R-M-'s battery and extreme cruelty to which they were both subjected. In her August 26, 2010 statement submitted on appeal, the petitioner explained how R-M-'s abuse caused her filing delay. The petitioner stated that the abuse crippled her emotionally and psychologically to the point that she was unable to take care of her own needs. The petitioner credibly explained in detail how she assumed responsibility for her younger siblings because she witnessed her mother being abused and knew that her mother could not protect them. The petitioner recounted how shouldering these responsibilities resulted in the neglect of her own needs and led her to near total social isolation. She states that by the time she had begun to recover from the emotional and psychological effects of the abuse she had already reached the age of 21.

¹ Name withheld to protect individual's identity.

The record also contains several letters from [REDACTED] counselor at [REDACTED] a counseling service operated by the [REDACTED]. In her March 16, 2009 letter, [REDACTED] stated that she had been treating the petitioner since 2003. She stated that the petitioner's role in the family was that of a second mother to her siblings and in particular as the primary caregiver to her brother, who required 24-hour supervision due to his special needs. When he began attending school, the petitioner assisted his special education teachers.

In her May 18, 2009 letter, [REDACTED] stated that the petitioner was first referred to the Community Guidance Center for counseling in 2001, at the age of 14. [REDACTED] recounted the abuse described by the petitioner in her statements, and added that the petitioner has a history of engaging in cutting behavior and suicidal ideation. [REDACTED] stated that as a result of the abuse to which the petitioner and her family was subjected by R-M-, she was "cheated out of [her] childhood" and forced into a parental role. Because she was taking care of her siblings, she did not have opportunities during her teenage years to learn about independence, which would have allowed her to fare for herself.

In her August 27, 2010 letter submitted on appeal, [REDACTED] stated that as typically happens with the oldest child in a family experiencing battery, the petitioner assumed responsibility for care of the entire family: her mother, her sister, and her brother. [REDACTED] explained how the petitioner became hypervigilant in order to protect her mother and siblings from being abused by [REDACTED] and consequently restricted her own activities. [REDACTED] stated that after [REDACTED] left the family, the petitioner was psychologically and emotionally exhausted, and that the abuse disrupted her developmental growth. She stated that even today, the petitioner still defines her self-worth solely through caring for her brother. According to [REDACTED] therapy has helped very little in shifting the petitioner's focus away from caring for everyone else in the family to helping her learn to care for herself. In conclusion, [REDACTED] stated that the abuse to which the petitioner was subjected by [REDACTED] prevented her normal development into adulthood. Because her focus has been on caring for her mother and siblings, she was incapable of seeking, and applying for, benefits for herself. According to [REDACTED] the petitioner finally filed the instant petition due to pressure from her mother and outside events and, although she has been in therapy for many years, her wounds have not healed and she remains vulnerable to stress and suicidal ideations. [REDACTED] explained that the petitioner had difficulty following through with this petition and confided that being forced to discuss and write about [REDACTED] abuse had caused her to think of suicide.

The director determined that the abuse was not a central reason for the filing delay because the petitioner ceased residing with her father before this petition was filed, after her mother obtained a restraining order against him and sought protection at a domestic violence shelter. Although the direct infliction of abuse may have ceased upon the petitioner's physical separation from her father, the record indicates that the effects of the abuse endured for years and significantly impacted the petitioner's development and ability to function. When considered in the aggregate, the relevant evidence submitted below and on appeal establishes that the abuse to which the petitioner was

subjected by her father was at least one central reason for her failure to file the petition before her twenty-first birthday. The petitioner has satisfied section 204(a)(1)(D)(v) of the Act and is eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act. The appeal will be sustained and the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden and the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.