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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)(B)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)

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 Vermont Service Center director (“the director”) denied the immigrant visa petition and dismissed a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 her lawful permanent resident parent.

The director denied the petition for failure to demonstrate that the petitioner’s father’s abuse was one central reason for her failure to file her petition before her twenty-first birthday. Accordingly, the director determined that the petitioner had not established the requisite qualifying relationship with a U.S. lawful permanent resident parent and eligibility for immigrant classification based on such a relationship. On appeal, counsel asserts that the relevant evidence credibly demonstrates that the abuse was at least one central reason for the filing delay.

*Applicable Law*

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.” Section 204(a)(1)(B)(iii) of the Act provides:

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 past two 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.

Section 204(a)(1)(D)(v) of the Act further 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 prescribes:

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 is a citizen of Mexico who was born in that country on June 10, 1985. The petitioner's father is a lawful permanent resident of the United States. The petitioner stated that she entered the United States in 2001 to live with her father in Texas. The petitioner reported that her earliest recollection of her father's abuse was when she was 11 years old and she saw him hit her mother and younger sister. She stated that her father's abuse escalated after her mother and sisters joined them in Texas in 2004 and the petitioner described several incidents of physical and psychological abuse during the ensuing two years. In her December 20, 2007 affidavit, the petitioner stated that her last contact with her father was in July 2006, one month after her twenty-first birthday.

The petitioner's father filed alien relative petitions (Forms I-130) on behalf of the petitioner and her mother on May 29, 2001, which were approved on November 19, 2005. The petitioner turned 21 on June 10, 2006. On October 12, 2006, the petitioner's mother filed a Form I-360 self-petition, on which she listed the petitioner as her child. On April 23, 2007, the Vermont Service Center approved the petitioner's mother's Form I-360, but the petitioner was not included as the derivative beneficiary of her mother's case because she was already 21 years old when her mother's self-petition was filed. The petitioner filed the instant Form I-360 on her own behalf on January 29, 2008 when she was 22 years old. The director subsequently issued a request for evidence (RFE) that her father's abuse was one central reason for her failure to file prior to her twenty-first birthday. The petitioner, through prior counsel, responded with additional affidavits from herself, her mother and sister and a letter from a social services agency regarding the family's therapy. The director noted that the additional evidence further demonstrated that the petitioner was a victim of her father's abuse, but that the evidence did not establish that the abuse was at least one central reason for her filing delay.

Counsel then filed a motion to reopen and reconsider the director's decision with which she submitted an additional affidavit and other evidence. Counsel simultaneously filed an appeal from the director's decision. As the regulations do not permit the simultaneous adjudication of an appeal and a motion, the director first adjudicated the motion. The director dismissed the motion on January 4, 2011 and forwarded the pending appeal to the AAO.

On appeal, counsel contends that the petitioner remains eligible for immigrant classification pursuant to the late-filing provisions at section 204(a)(1)(D)(v) of the Act because the relevant evidence shows that her father's abuse was a central reason for her failure to file the petition before her twenty-first birthday.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on motion, demonstrates that the abuse of the petitioner's father was at least one central reason for her failure to file her self-petition before she turned 21. Accordingly, the appeal will be sustained.

*The Petitioner's Father's Abuse was a Central Reason for the Filing Delay*

The record shows that the petitioner was subject to her father's battery and extreme cruelty during her childhood and early adulthood. In particular, in her first affidavit, the petitioner recounted an incident in September 2005 where her father physically assaulted her and he was arrested by the police. The petitioner further described an incident which occurred in March 2006 when her father began to choke her mother and assaulted her sister when her sister intervened. The petitioner stated that her father left their home after the March 2006 incident, but last contacted her in July 2006 when he asked for money and berated her when she told him that she did not have any money to lend him.

In her January 27, 2010 affidavit submitted in response to the director's RFE, the petitioner further described the cycle of her father's abuse and its effects on her, her mother and her younger sisters. In their January 28, 2010 affidavits, the petitioner's mother and sister explained that the petitioner continued to suffer from the effects of her father's abuse after he left them because as the eldest daughter, she had to shoulder the financial and emotional pressures of helping the family move forward. The petitioner also submitted a letter from [REDACTED] who confirmed that the petitioner participated in family therapy at the Center from June 13, 2007 to March 13, 2009. [REDACTED] explained that the petitioner and her family worked to reduce their Post Traumatic Stress symptoms stemming from the petitioner's father's years of abuse as "a violent alcoholic who tormented each member of the household at every opportunity."

In her April 8, 2010 affidavit submitted on motion, the petitioner further described in detail how her father's abuse and its enduring effects prevented her from filing her self-petition before she turned 21. In particular, the petitioner recounted how her father used to threaten to leave her family as a form of blackmail. She explained that prior to his departure in March 2006, he had always returned after leaving their house and threatening to abandon them. The petitioner recounted that she and her sisters and mother were so certain that he would come back that they put furniture in front of the doors in case he tried to return that night. The petitioner further explained that her mother signed an extension of the joint lease she had with her father in May 2006 because she assumed that he would return. However, in July 2006, the petitioner reported that she and her mother decided to move because they could no longer afford the rent without her father's help.

The petitioner also explained in credible detail how the attorney who had filed her father's immigrant petitions on her and her mother's behalf told them she could no longer represent them after they disclosed her father's violence. The attorney referred them to an organization where the

petitioner explained that prior counsel erroneously believed the petitioner would be a derivative beneficiary of her mother's Form I-360 self-petition because of the Child Status Protection Act. The petitioner further explained that although her priority date from the approved Form I-130 petition filed by her father became current in July 2007, she could not adjust her status based on that petition because her father refused to sponsor her. The director did not address this additional testimony in the petitioner's April 8, 2010 affidavit in his dismissal of the petitioner's motion.

Although this petition was filed in January 2008 when the petitioner was 22 years old, the preponderance of the evidence shows that the petitioner was unable to file the petition before turning 21 due, in central part, to her father's abuse. The petitioner was subjected to her father's abuse throughout her childhood and he abandoned their family in March 2006, just three months before the petitioner's twenty-first birthday. The record further shows that the petitioner received therapy for post-traumatic stress induced by her father's abuse from June 2007 to March 2009. Finally, U.S. Citizenship and Immigration Services (USCIS) records confirm that the alien relative petition filed by the petitioner's father on her behalf was approved in 2005, but she did not file an application to adjust her status based on that petition. The records thus support the petitioner's claim that she was unable to adjust her status when her priority date became current in 2007 due to her father's refusal to sponsor her. In sum, the relevant evidence shows that although the petitioner's father physically abandoned the petitioner shortly before she turned 21, the petitioner continued to suffer from the effects of his battery and extreme cruelty such that his abuse was a central reason for her inability to file the instant petition prior to her twenty-first birthday.

*Conclusion*

The petitioner has demonstrated her eligibility for the late-filing provisions of section 204(a)(1)(D)(v) of the Act and has established the requisite qualifying relationship and eligibility for immigrant classification pursuant to section 204(a)(1)(B)(iii) of the Act.

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. The petitioner has met this burden. The appeal will be sustained and the petition will be approved.

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