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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: JUN 02 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)

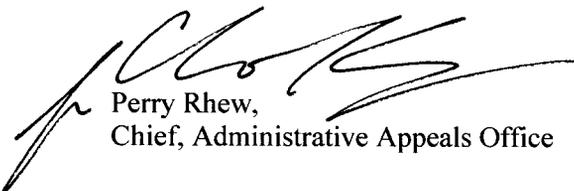
ON BEHALF OF PETITIONER:



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 affirmed his decision in response to a subsequent motion to reopen or reconsider. 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.

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 his father's abuse was a central reason for his delay in filing the petition, he had failed to establish the existence of a qualifying parent-child relationship with a lawful permanent resident of the United States. On appeal, counsel submits a brief reasserting the petitioner's eligibility.

Applicable Law

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.

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 Mexico, was born on February 29, 1988. The record indicates that he entered the United States without inspection at eight years of age. He filed the instant Form I-360 on March 30, 2009, when he was 22 years of age. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to his requests for additional evidence, the director denied the petition on July 9, 2010.

Counsel filed an untimely appeal, which the director treated as a motion pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2). On September 24, 2010, the director affirmed his decision denying the petition.

On appeal, counsel asserts that the petitioner has established that the abuse to which he was subjected by his father was in fact a central reason for his delay in filing the petition and that, as such, he remains eligible for immigrant classification pursuant to the late-filing provisions contained 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 May 7, 2009 affidavits, the petitioner and his mother discussed in credible, probative detail the battery and extreme cruelty to which they were both subjected by the petitioner's father. In his March 4, 2010 affidavit, the petitioner explained how that abuse caused his filing delay. The petitioner stated that he feared his father would kill him, his sisters, or his mother if his father ever discovered that he had reported the abuse. He explained that his mother was the only person in whom he confided, and that she had encouraged him to remain silent about the abuse, as she also feared retribution. According to the petitioner, he only discussed his family's history of violence after being advised to do so by his attorney.

The petitioner also asserted that he had been traumatized by his father's actions. He explained how he quit school at the age of 12 so that he could work to help support his mother and sisters, and that because nothing was more important to him than their survival, he did not want to discuss his father's behavior with anyone for fear of retribution. He also explained how, after he finally decided to file the instant petition, he faced difficulty gathering together necessary documentation to

support the petition due to his father having set fire to the family's homes on multiple occasions, which further delayed his filing of the petition.

The record also contains two letters from [REDACTED], a certified clinical psychopathologist and licensed mental health counselor. In his first letter, [REDACTED] explained how the petitioner took on a parental role within the family, and that he is currently the sole provider for his mother and sisters. He also stated that the petitioner suffers from Posttraumatic Stress Disorder (PTSD) and Dysthymic Disorder, which is a chronic, moderate depressed mood.

[REDACTED] addressed the filing delay more specifically in his July 31, 2010 letter. He explained that the petitioner "still has a hard time verbalizing about the horrific events of his childhood" and that the process of filing the instant petition, which required him to discuss the abuse has caused the petitioner to feel sad and ashamed. [REDACTED] explained that "[t]his state of psychoemotional confusion" is common in PTSD patients, and was detrimental to the petitioner's ability to timely file.

The director found the petitioner ineligible for the late-filing provision because the petitioner did not have ongoing contact with his abusive father and "failed to establish that [his] late filing was a direct result of the abuse [he] suffered." *Director's Decision on Motion* (Sept. 24, 2010). However, to establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a petitioner need not show ongoing abusive contact or an immediate nexus between the abuse and the filing delay. The statute also does not require that the battery or extreme cruelty be the sole reason for the delay in filing. To be considered central, the nexus between the battery or extreme cruelty and the filing delay must be more than incidental or tangential.

When considered in the aggregate, the relevant, credible evidence establishes that the petitioner's father's abuse was a causative factor in his filing delay that was more than incidental or tangential. The record indicates that the petitioner began preparing his case in late 2007, when he was 19 years-old, but that he faced serious obstacles due to his father's abuse. The record establishes the enduring and significant psychological effects of the abuse and the petitioner's inability to timely replace documents destroyed when his father repeatedly set fire to the family's residences. The petitioner has demonstrated that as of the day before his twenty-first birthday, he qualified to file a self-petition under section 204(a)(1)(B)(iii) of the Act and that his father's abuse was at least one central reason for his filing delay. The director's contrary determination is hereby withdrawn. The appeal will be sustained.

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.