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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 17 2011** Office: VERMONT SERVICE CENTER 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 the \$630 fee. 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, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a United States citizen.

The director denied the petition for failure to establish the requisite joint residence and abuse. On appeal, counsel submits a brief. Counsel asserts that the affidavits from the petitioner and her family prove that the petitioner resided with and was abused by her U.S. citizen stepmother.

Applicable Law and Regulations

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.

Facts and Procedural History

The petitioner was born in Hong Kong on November 15, 1998 to [REDACTED]. [REDACTED] The petitioner, a citizen of China, entered the United States as a nonimmigrant visitor in 2002. The petitioner's biological father, [REDACTED], wed a U.S. citizen, the alleged abuser, on October 19, 2003, in California. The petitioner's stepmother subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, which was denied on September 28, 2006, due to abandonment. The petitioner filed the instant Form I-360 self-petition on February 17, 2009. The director subsequently issued a request for additional evidence (RFE) that the petitioner had the requisite qualifying relationship, joint residence, and abuse. The petitioner, through counsel, submitted additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite joint residence and abuse.

On appeal, counsel asserts that the affidavits from the petitioner and her family prove that the petitioner resided with and was abused by her U.S. citizen stepmother. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

Joint Residence

On the Form I-360, the petitioner left blank Part 7, Sections A and B that asks for information about the U.S. citizen abuser, the dates of the joint residence, the "last address at which you lived together . . .

.” and “the last date you lived together with that person at that address.” The petitioner also did not submit any initial evidence in support of her claim.

In her February 15, 2010 statement submitted in response to the RFE, the petitioner stated that: in 2003, she moved to California to live with her father and stepmother; she and her stepmother lived alone after her father moved to New Jersey to work in late 2005; and she and her stepmother went to New Jersey to join her father and they lived together until her stepmother moved out in January 2006.

In his February 18, 2010 affidavit submitted in response to the RFE, the petitioner’s father, [REDACTED] stated, in part, that: he, his U.S. citizen wife, and the petitioner lived at [REDACTED] until they moved in October 2004 to [REDACTED] which is the address on their 2005 income tax and where his wife and the petitioner continued to live after he moved in November 2005, to [REDACTED] he rented an apartment at [REDACTED] which he sublet, because he lived most of the time at the restaurant where he worked at the [REDACTED] the petitioner and his wife visited him on the east coast shortly after he moved there; and when his wife left him, his sister offered to allow him to move in with her so that she could take care of the petitioner.

In his February 8, 2010 affidavit submitted in response to the RFE, Mr. [REDACTED], stated, in part, that, on occasion, he visited the petitioner, her father, and her stepmother at their apartment in [REDACTED]

In her February 15, 2010 affidavit submitted in response to the RFE, the petitioner’s biological mother, [REDACTED] stated, in part, that she asked the petitioner’s father, her former husband, who had remarried in 2003, to take care of the petitioner because she was having trouble supporting her.

In her February 9, 2010 affidavit submitted in response to the RFE, Ms. [REDACTED], stated, in part, that the petitioner moved to California to live with her father and stepmother after their marriage on October 19, 2003.

In his February 8, 2010 affidavit submitted in response to the RFE, the petitioner’s uncle, [REDACTED] stated, in part, that his sister (the petitioner’s biological mother) left the petitioner in California with her father and stepmother after their marriage on October 19, 2003.

In her February 11, 2010 affidavit submitted in response to the RFE, the petitioner’s aunt [REDACTED] states, in part, that the petitioner lived with her father and stepmother in California after their marriage on October 19, 2003.

The petitioner also submitted of photos of herself with her father and stepmother.

The AAO acknowledges counsel’s assertion that the affidavits from the petitioner and her family prove that she resided with her U.S. citizen stepmother. The record, however, contains inconsistencies and deficiencies. In his February 18, 2010 affidavit, the petitioner’s father, [REDACTED]

██████████ stated, in part, that he, his wife, and the petitioner lived at ██████████ California, until they moved in October 2004 to ██████████ which is the address on their 2005 income tax return and where his wife and the petitioner continued to live after he moved to New Jersey to work. This information is inconsistent with the information on the petitioner's Form G-325A, Biographic Information, which indicates that from September 2003 until the petitioner signed the form on January 2, 2004, she resided at the "██████████ in ██████████ In addition, although the petitioner asserts that she and her stepmother moved to New Jersey to live with her father, the petitioner's father stated in his February 18, 2010 affidavit only that the petitioner and his wife "visited" him in New Jersey, and that he sublet his apartment in Philadelphia, Pennsylvania, because most of the time he lived at the restaurant where he worked in New Jersey. It is also noted that the divorce decree of the petitioner's biological parents indicates that there were no minor children of their marriage and also does not include any custody rulings. Moreover, the 2004 and 2005 income tax returns for the petitioner's father and stepmother do not list the petitioner as a dependent. The record also contains no leases or school records to corroborate the claimed joint residences or an explanation as to why such documentation is unavailable. The record contains no explanation for these inconsistencies and deficiencies. Upon review, the evidence of record does not establish that the petitioner ever resided with her U.S. citizen stepmother at the claimed joint addresses listed in the record. It is also noted that the statements submitted by the petitioner and on her behalf regarding the claimed joint residence are general and vague and provide minimal information pertinent to the circumstances of the petitioner's claimed joint residence with her U.S. citizen stepmother. Further, the photographs confirm that the petitioner and her stepmother were pictured together, but these documents alone do not establish that the petitioner resided with her stepmother.

In sum, the relevant evidence contains inconsistent and deficient information regarding the petitioner's alleged residence with her U.S. citizen stepmother. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her U.S. citizen stepmother, as required by section 204(a)(1)(A)(iv) of the Act.

Battery or Extreme Cruelty

In her February 15, 2010 statement submitted in response to the RFE, the petitioner stated that: after her father and stepmother had been married for seven months, her stepmother began going out during the day and night and leaving her alone; her stepmother was mean to her and locked her in her room; she had to beg to use the bathroom; she was afraid of her stepmother and was afraid that if she heard her crying, she would get punished; her stepmother screamed at her and called her stupid, bad, and naughty; her stepmother hit her and punished her by not giving her food; her stepmother shouted at her and slapped her if she asked for food; one night her stepmother kicked her father out of the bedroom and she constantly insulted, taunted him, yelled at him, and used bad words; she was left alone with her stepmother when her father moved to New Jersey to work and her stepmother locked her in her room for hours; one night she used the bathroom and ate some food after she heard her stepmother leave the house, and she was afraid that her stepmother would return at any time; two days after she and her stepmother moved to New Jersey to join her father, her stepmother cursed at her, left her alone, sent her to her room, did not feed her, hit her, and kicked her in the legs and back; when she asked if she could go outside or play, her stepmother grabbed her ear, twisted it, and yelled

at her; in January 2006, her stepmother moved out of their house after she slapped her and yelled at her.

In his February 18, 2010 affidavit submitted in response to the RFE, the petitioner's father, [REDACTED], stated, in part, that his wife battered him and the petitioner, and she hit and traumatized the petitioner.

In his February 8, 2010 affidavit submitted in response to the RFE, Mr. [REDACTED] stated, in part, that the petitioner's father started calling him in late 2005, and told him that his wife would not feed his daughter, locked her in her room, slapped and hit her, and shouted and cursed at her.

In her February 15, 2010 affidavit submitted in response to the RFE, the petitioner's biological mother, [REDACTED], stated, in part, that her daughter called her in 2005, and was crying because her stepmother hit her constantly and randomly, did not feed her, punished her and locked her in her room if she cried, did not allow her to use the bathroom, and screamed and yelled at her.

In her February 9, 2010 affidavit submitted in response to the RFE, [REDACTED] stated, in part, that the petitioner's father told her that his wife had become a completely different person and that she did not take good care of the petitioner, she left the petitioner home alone, and she often screamed at her and slapped her.

In his February 8, 2010 affidavit submitted in response to the RFE, the petitioner's uncle, [REDACTED], stated, in part, that: his sister (the petitioner's biological mother) called him in late 2005, and told him that the petitioner's stepmother was neglecting and abusing the petitioner, that she always yelled at the petitioner, hit her without warning, denied her food, and sent her to her room; and though the petitioner's father was reluctant to tell him about the situation with his wife, he did tell him that his wife mistreated the petitioner.

In her February 11, 2010 affidavit submitted in response to the RFE, Ms. [REDACTED] stated, in part, that: the petitioner called her at the end of 2005, and was crying because her stepmother constantly screamed at her, frequently starved her, hit and slapped her, kicked her legs and spanked her buttocks; the petitioner was afraid to talk to her on the telephone because her stepmother became agitated whenever Chinese was spoken; and the petitioner was ordered to stay in her room and was not allowed to use the bathroom.

On appeal, counsel states that the director's decision was in error because the petitioner suffered while living with her U.S. citizen stepmother and that the petitioner's affidavit provided detailed information on how her stepmother abused the petitioner while the petitioner's father was at work.

We find no error in the director's assessment of the relevant evidence. Both the petitioner's mother and her aunt (the petitioner's father's sister) testify to the petitioner calling them crying in late 2005, complaining about how she was being treated by her stepmother. The petitioner, however, does not mention either call in her affidavit and only describes telling her father about the alleged abuse. In addition, although the petitioner states that she was hit, screamed at, locked in her room, and deprived of food by her stepmother, she does not provide the probative details of these alleged incidents. Upon review, the relevant evidence in this case fails to demonstrate that, during the

marriage of her father and U.S. citizen stepmother, the petitioner's stepmother subjected her to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iv) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The petitioner has failed to establish the requisite joint residence and abuse. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. The petition remains denied.