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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**



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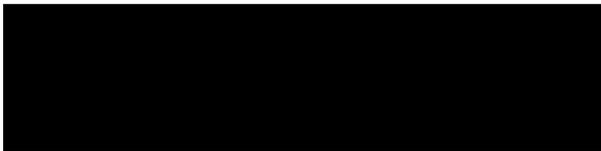
DATE: **JUN 22 2011** OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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:

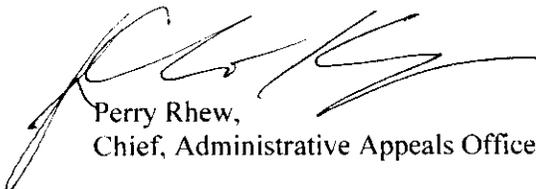


INSTRUCTIONS:

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 a fee of \$630. 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 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 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 an alien child battered or subjected to extreme cruelty by his United States citizen father.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that he had resided with his father or that his father had subjected him to battery or extreme cruelty. On appeal, counsel submits an argument made on the Form I-290B, Notice of Appeal and additional evidence.

Applicable Law

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 such 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 Secretary of Homeland Security under this subparagraph for immigrant 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 citizen parent.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, 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].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part, the following:

- (v) *Residence . . .* The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have been resided with the abuser in the United States in the past.
- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape,

molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawfully permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iv) of the Act are explained further at 8 C.F.R. § 204.2(e)(2), which states, in pertinent part, the following:

Evidence for a child's self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other types of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Pertinent Facts and Procedural History

The petitioner is a citizen of Pakistan who was born on [REDACTED]. He was legally adopted by E-G-,¹ a citizen of the United States, on [REDACTED], 2004. He filed the instant Form I-360 on November 6, 2009.² The director issued two subsequent requests for additional evidence, to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including counsel's responses to his requests for additional evidence, the director denied the petition on November 24, 2010.

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 failed to overcome the director's grounds for denial of the petition.

To the extent the director implied documentary evidence is required to establish the petitioner's claim, that portion of his November 24, 2010 decision is hereby withdrawn. Self-petitioners may, but are not required, to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i).

Joint Residence

The petitioner stated on the Form I-360 that he lived with E-G- from August 1999 until September 1, 2006, and that the last address at which they lived together was located at [REDACTED] in [REDACTED]. On the Form G-325A, Biographic Information he signed on September 10, 2009, the petitioner stated that he lived at the [REDACTED] address in [REDACTED] from August 1999 until September 2006. Also, the December 2, 2004 adoption decree³ stated that E-G- had had "actual care, possession, and control of [the petitioner] since 1999." Accordingly, the petitioner's assertions at the time he filed the petition indicated that he lived with E-G- at the [REDACTED] address in [REDACTED] from August 1999 until September 2006.

However, voluminous documentary evidence of record conflicts with the petitioner's claim to have resided with E-G- at the [REDACTED] address in [REDACTED] from August 1999 until September 2006. In particular, we note the following:

- An undated document issued by the [REDACTED] School District ([REDACTED]) summarizing the petitioner's grades between 2000 and 2005, which names A-R-⁴ the petitioner's uncle, as his "Parent Guardian";

¹ Name withheld to protect individual's identity.

² The petitioner remains in immigration proceedings before the Immigration Court in Houston, Texas and his next hearing is scheduled for September 1, 2011.

³ The record contains a copy of an "Order Granting Adoption" issued by the [REDACTED] Court at Law, Case Number [REDACTED], dated December 2, 2004 and filed December 13, 2004. The record also contains an adoption certificate dated December 2, 2004.

⁴ Name withheld to protect individual's identity.

- A "Textbook Card" for the 2004-05 school year listing the petitioner's address as [REDACTED] (no city was provided) and naming A-R as his parent;
- Copies of invoices regarding dental care for the petitioner dated July 12, 2004; January 17, 2005; and August 1, 2005, all of which list his address as [REDACTED] and [REDACTED];
- A "Grade Report" issued by the [REDACTED] School System on May 24, 2002, listing the petitioner's address as [REDACTED] and indicating that he was living with [REDACTED].

The record also contains voluminous testimonial evidence that conflicts with the petitioner's claim to have resided with E-G- at the [REDACTED] address in [REDACTED] between August 1999 and September 2006. In particular, we take note of the following:

- In his May 7, 2009 letter submitted to the Immigration Court, the petitioner stated that he had lived with A-R- since his arrival in the United States. The petitioner explained that A-R- kicked him out of the home in September 2006 and that although E-G- wanted to take him in, A-R- threatened him. We also note that the petitioner referred to A-R- as his "real father" in this letter.
- In his November 2, 2009 letter, the petitioner stated that he moved out of A-R-'s home in the spring of 2000 and relocated with his grandmother to [REDACTED]. The petitioner stated that after attending the eighth grade in [REDACTED], he returned to A-R-'s home. Although the petitioner stated that he ultimately began living with E-G-, he did not provide a date on which that alleged joint residence began.
- In his June 7, 2010 letter, the petitioner stated that he had always lived with E-G-. He stated that although he visited A-R-'s home frequently, he always returned to E-G-'s home to sleep. Finally, the petitioner stated that he lived in [REDACTED] between 2001 and 2002.
- In her undated letter, [REDACTED], the petitioner's grandmother, stated that she took the petitioner to [REDACTED] when she and her husband saw the abuse to which he was being subjected by A-R-.

Upon review, we agree with the director's determination that the petitioner has failed to demonstrate that he resided with E-G-. In his November 24, 2010 decision denying the petition, the director found that the inconsistencies between the petitioner's testimony and the relevant evidence diminished the evidentiary value of the petitioner's testimony regarding his alleged residence with E-G-. However, even if the petitioner's testimony regarding his alleged residence with E-G- were not lacking in probative value, it would still not resolve the inconsistencies outlined above. His May 7, 2009 statement that he had lived with A-R- since his arrival in the United States in 1999 conflicts directly with his June 7, 2010 statement that he had always lived with E-G-, and both of these statements conflict with the evidence establishing that he also lived in [REDACTED]. His attempt to explain these inconsistencies by stating that E-G-, A-R-, and other family members all live in close proximity to one another and that he spent time in each home does not resolve those inconsistencies, as that assertion conflicts with his prior statements that he had lived with A-R- since his arrival in the United States and, alternatively, that he had always resided with E-G-.

Even absent these inconsistencies, the petitioner's testimony would still not demonstrate his allegedly joint residence with E-G-, as the petitioner failed to describe their joint residence in any meaningful way. For example, the petitioner failed to describe the home he shared with E-G- or any aspect of their shared, residential routine.

Nor does the testimonial evidence submitted on appeal establish that the petitioner resided with E-G-. [REDACTED], who is married to A-R-, stated in her December 16, 2010 affidavit that the petitioner lived with E-G- at the [REDACTED] address in [REDACTED] "for more than two years," and E-G- made the same assertion in his December 16, 2010 affidavit. However, their testimony does not address or resolve the inconsistencies discussed above.

On appeal, counsel argues that in denying the petition on this ground, the director went behind the findings of the judge who entered the adoption order as well of those of the Immigration Judge (IJ). We are not persuaded by this argument. We acknowledge that the judge who entered the December 2, 2004 adoption order stated that E-G- had had "actual care, possession, and control of [the petitioner] since 1999," and that the IJ stated in his June 30, 2009 decision granting the petitioner's motion to reopen immigration proceedings that the petitioner "was under the care, custody, and control" of E-G-. However, the petitioner has himself stated that those findings were not correct: as noted, he stated in his May 7, 2009 letter that he had lived with A-R- since his arrival in the United States, and in his November 2, 2009 letter he stated that he lived in [REDACTED] with his grandmother. The petitioner cannot rely on statements made by these two judges when he himself makes directly conflicting statements.

Counsel also contends that because the petitioner was a child, he could not have forced E-G- to "include him in documentation." We agree. However, the issue with the documentary evidence in this case is not the non-existence of such evidence, but rather that it conflicts with the petitioner's assertion that he resided with E-G- at the [REDACTED] address in [REDACTED] from August 1999 until September 2006.

The petitioner has failed to demonstrate that he resided with E-G-, as required by section 204(a)(1)(A)(iv) of the Act.

Battery or Extreme Cruelty

In his May 7, 2009 letter, the petitioner stated that E-G- tried to talk A-R- into kicking the petitioner out of A-R-'s home; paid an immigration attorney to "turn against" him; laughed at the prospect of his potential deportation; and threatened him.

In his November 3, 2009 self-affidavit the petitioner discussed the abuse to which he was subjected while living with A-R- and his wife, and stated that E-G- "took a liking" to him and told A-R- that he would like to adopt him. The petitioner explained that he was relieved to be away from the "hell" he had experienced while living with A-R-, and that he enjoyed having a father, E-G-, who cared about him. However, according to the petitioner, that phase of his life ended when E-G-'s wife became pregnant. The petitioner stated that E-G- then began treating him in the same manner

as A-R- had done, recounting that E-G- made him do all the housework; clean up after his cousin; work at A-R-'s gas station; stopped feeding him; hit him; locked him in his bedroom; made him do his brother's school homework; made no arrangements for his transportation to school; refused to file his immigration paperwork; and ridiculed his immigration status. The petitioner stated that he mowed grass and washed cars in order to earn money for food. He recounted that after E-G- threw him out of the house, he was forced to live on the streets for several weeks.

In his June 7, 2010 letter, the petitioner stated that E-G- mistreated, abused, and threatened him. He stated that E-G- made him clean up after his father's parties; deprived him of food; ridiculed his immigration difficulties; called him names; and threatened to "chop off his head" if he reported the abuse.

The petitioner's testimony does not establish that E-G- subjected him to battery or extreme cruelty. As discussed previously, the petitioner has not established that he resided with E-G- and, as such, his statements and those of his affiants do not establish that he was abused by E-G- while residing with him, as required by 8 C.F.R. § 204.2(e)(1)(vi). The petitioner, therefore, has failed to establish that E-G- subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iv) of the Act.

Conclusion

The petitioner has failed to establish that he resided with E-G- or that E-G- subjected him to battery or extreme cruelty during their joint residence. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.