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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

**PUBLIC COPY**

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 10 2011

IN RE:

Petitioner:



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 Director, Vermont Service Center, denied the immigrant visa petition. 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 his 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 his failure to file his petition before his 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 abuse was substantially documented, and the effects of the abuse lingered long after the petitioner no longer resided with his father and were a 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 November 10, 1984. The petitioner's father is a lawful permanent resident of the United States. The petitioner submitted two statements, dated November 2, 2009 and May 28, 2010, respectively. The petitioner stated that he entered the United States without inspection when he was five years old. The petitioner reported that what he remembered of his childhood was emotional, verbal, and physical abuse from his father. He recounted several incidents of abuse by his father and abandonment by him when the petitioner was around 15 years old. The petitioner reported that when he was 21 years old, he, his father, and his siblings all lived together in an apartment for financial reasons, during which time the petitioner suffered more abuse from his father. The petitioner stated that when he was 23 years old, his father moved out because he was angry with the petitioner for not paying all the bills, and he has had little or no contact with his father since.

The petitioner filed the instant Form I-360 on his own behalf on November 9, 2009, when he was 24 years old. The director subsequently issued two requests for evidence (RFE) that he had resided with his father and that his father's abuse was one central reason for his failure to file prior to his twenty-first birthday. The petitioner, through counsel, responded with a lease agreement, school records, a Consular Identification Card, social services records, and a statement from himself. The director noted that the additional evidence demonstrated that from the age of 15 through 21, the petitioner resided separately from his father, and that the petitioner's statement that he did not know about being able to submit a petition under the Violence Against Women Act (VAWA) was insufficient to establish that the abuse was at least one central reason for his filing delay.

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 his father's abuse was a central reason for his failure to file the petition before his 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 demonstrates that the abuse of the petitioner's father was at least one central reason for his failure to file his self-petition before he 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 his father's battery and extreme cruelty during his

childhood and young adulthood. In particular, in his first statement, the petitioner recounted that his father insulted and hit his mother for many years, and that his father physically assaulted him on many occasions, including one for falling on the floor at a party and another for playing instead of going to bed. The petitioner also stated that his brother was physically assaulted by his father and when his injury was detected at school, "child protection" showed up at their house. The petitioner stated that when he was eight or nine years old, his father verbally and physically assaulted him again after a neighbor woman complained to his father that the petitioner had taken her son without her permission, when, in fact, the neighbor boy had followed the petitioner home. The petitioner stated that his father was always drunk, and called him "stupid" and "curse names," slapped him on the head, and threatened to throw him out of the third story window. The petitioner recounted that his mother would not allow him to call the police on his father because they would have no means to support themselves.

The petitioner stated that when he was 13 years old, he was molested by his uncle and also by a neighbor woman, who joked with his father that she was making a man out of him. The petitioner stated that when he was 15 years old, a social worker was assigned to him, whereupon he received counseling and therapy, and a medical examination of the physical injuries he suffered from the molestation by his uncle. The petitioner stated that when he was in ninth grade, a school counselor asked his father why immigration papers had not been filed on his behalf, whereupon his father became angry at the petitioner for discussing the matter with the school counselor and told the petitioner that he would have to work to pay an attorney for the filing fees, that the only reason he wanted "his papers" was for going "to Tijuana and have sex because [he] was gay," and that he had to move out of the house.

The petitioner stated that he, in turn, went to stay with an uncle and also stayed with an aunt until he was 20, at which time he and his brother rented a room. The petitioner stated that when his father kicked his sister out of his home, the petitioner was responsible for taking care of his two siblings, but he could not rent a house because he did not have a social security number. The petitioner stated that he asked his father to cosign a lease, which his father agreed to do only because he thought the petitioner would pay all the bills. The petitioner stated that, due to financial reasons, he, his father and his siblings all lived together in an apartment until his father became angry at the petitioner for not paying all the bills and moved out when the petitioner was 23 years old.

In response to the director's first RFE, the petitioner, through counsel, submitted the petitioner's elementary school records listing the petitioner's father as his parent/guardian, and a log dated November 4, 1991, reporting that the petitioner's five-year-old brother showed up at school with a bruise on his face and that his sibling reported that their father had slapped him for "disobeying father's order." Also submitted were several reports dated from 1999 through 2000 from the San Diego Health and Human Services, listing the petitioner's aunt as his primary caretaker, and indicating that the petitioner reported that: he was physically abused by his father and that his father refused to take care of him; he was sexually abused by an uncle and a neighbor; he was homeless and had a serious medical condition, as a result of his uncle sodomizing him; his father refused to accept responsibility for him and blamed him for the sexual abuse from his uncle and a neighbor; he did not

go outside for two years after the molestation because of his guilt and shame; he never received any medical treatment for the molestation despite his problems with anal bleeding; and, despite the attempts of the social worker (the author of the report) to contact the petitioner's father, the petitioner's father did not return her telephone calls. Also submitted was a physical assessment from the petitioner's hospital visit on April 12, 2000, indicating that the petitioner reported rectal bleeding from a sexual assault three years prior and that he was afraid that his father would be angry because he was "unable to pay."

In his May 28, 2010 statement submitted in response to the director's second RFE, the petitioner reiterated the abuse described in his initial statement and stated that the enduring effects from his father's abuse prevented him from filing his self-petition before he turned 21. The petitioner stated that, due to his father's inability to accept his homosexuality, the abuse he received from his father was even harsher than that inflicted on his mother and siblings. The petitioner also recounted how, at the age of 18, he was left to care for his siblings because his mother moved to Mexico and his father refused to help, and, due to that responsibility, the petitioner had to drop out of school and get a job. The petitioner stated that he had difficult time finding a place to rent, and that, when he was 21 years old, his father cosigned for an apartment, but agreed to do so only because he wanted to live in the apartment with the petitioner and his siblings for free. The petitioner stated further that it would have been dangerous for him to file the petition while living with his father.

The director determined that the petitioner's father's abuse was not a central reason for the filing delay because the petitioner did not reside with his father from the age of 15 to 21. The preponderance of the relevant evidence demonstrates, however, that the effects of his father's abuse endured throughout the petitioner's teenage years and his early adulthood. In addition to the physical and psychological abuse the petitioner's father inflicted upon him when they resided together during the petitioner's young childhood, the record also contains probative and credible evidence that the petitioner's father's abuse continued after that time and included kicking the petitioner out of his home, refusing to file an immigrant petition on the petitioner's behalf because of his sexual orientation, refusing to economically support the petitioner and his siblings when they were still minors, and refusing to obtain medical care for the petitioner after he was molested by his uncle. The record demonstrates that because of his father's abuse, the petitioner was rendered homeless and had to drop out of high school to support himself and his younger siblings. In sum, the relevant evidence shows that the abuse that the petitioner suffered from his father throughout his childhood and into his early adulthood was a central reason for his inability to file the instant petition prior to his twenty-first birthday. Accordingly, the director's decision to the contrary is hereby withdrawn.

### *Conclusion*

The petitioner has demonstrated his 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

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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.