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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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FILE:

Office: VERMONT SERVICE CENTER

Date: MAR 10 2011

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)

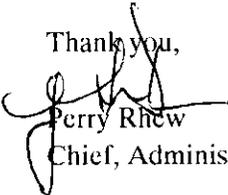
ON BEHALF OF PETITIONER:

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 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 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 petition remains denied.

The petitioner seeks immigrant classification pursuant to 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 battered or subjected to extreme cruelty by his United States citizen stepparent.

The director denied the petition on March 24, 2010, determining that the petitioner had not established a qualifying relationship at the time of filing the petition. On appeal, counsel submits a brief.

Applicable Law and Regulations

Section 204(a)(1)(A)(iv) of the Act provides 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) of the Act 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 classification of the alien (and any child of the alien) under such section if the alien demonstrates to the [Secretary of Homeland Security] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

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 who is . . . (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred.

Section 204(a)(1)(D)(v) of the Act provides a late-filing waiver for individuals meeting the following requirements:

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. . . .

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Trinidad and [REDACTED]. The petitioner entered the United States on October 26, 2003 as a B-2 visitor. He filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on or about July 27, 2004

based on an approved Form I-130, Petition for Alien Relative that was filed by the petitioner's stepparent on his behalf. On December 6, 2007, the petitioner's Form I-485 was denied, and on July 10, 2008, he was issued a Notice to Appear in immigration court. The petitioner filed the instant Form I-360 on September 2, 2008, subsequent to his twenty-fifth birthday.

The director determined that the petitioner was not a child, as defined at section 101(b)(1) of the Act and that the petitioner had not filed prior to his 25th birthday; thus, pursuant to section 204(a)(1)(D)(v) of the Act, he was not eligible for a late-filing waiver. Accordingly, the director denied the Form I-360 petition as the petitioner had not established a qualifying relationship when the petition was filed.

On appeal, counsel asserts that 8 C.F.R. § 204.2(h)(2) is applicable to the matter at hand. The regulation at 8 C.F.R. § 204.2(h)(2) provides in pertinent part:

Subsequent petition by same petitioner for same beneficiary. When a visa petition has been approved, and subsequently a new petition by the same petitioner is approved for the same preference classification on behalf of the same beneficiary, the latter approval shall be regarded as a reaffirmation or reinstatement of the validity of the original petition, . . . A self- petition filed under section . . . 204(a)(1)(A)(iv) . . . of the Act, based on the relationship to an abusive citizen or lawful permanent resident of the United States will not be regarded as a reaffirmation or reinstatement of a petition previously filed by the abuser. A self-petitioner who has been the beneficiary of a visa petition filed by the abuser to accord the self-petitioner immigrant classification as his or her . . . child, however, will be allowed to transfer the visa petition's priority date to the self-petition. The visa petitioner's priority date may be assigned to the self-petition without regard to the current validity of the visa petition.

Counsel contends that the Form I-130 priority date should be transferred to the petitioner's Form I-360 to make the filing date of the Form I-360 a date prior to the petitioner turning 21 years old.

The Petitioner is not Eligible for the Late Filing Provision 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). A full review of the record, including the evidence submitted on appeal, establishes that the petitioner was not eligible to file a Form I-360 as the child of an abusive stepparent. The regulation cited by counsel predates the amendment to the statute providing a late filing waiver for individuals who no longer meet the definition of a child. The regulation only addresses priority dates and is inapplicable to eligibility for immigrant classification under section 204(a)(1)(A)(iv) of the Act based on the actual filing date of a Form I-360 self-petition by the son or daughter of an abusive citizen. Section 204(a)(1)(D)(v) of the Act specifically requires a petitioner to file a Form I-360 before he reaches the age of 25. In this matter, the petitioner filed the Form I-360 after he turned 25 years old. Accordingly, he no longer meets the definition of a child at section 101(b)(1)(B) of the Act, is ineligible for a late-filing waiver pursuant to section 204(a)(1)(D)(v) of the Act, and is ineligible for immigrant classification as the abused child of a United States citizen under section 204(a)(1)(A)(iv) of the Act.

Conclusion

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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