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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 31 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.

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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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.

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will repeat certain facts only as necessary here. In this case, the director initially denied the petition on February 20, 2008, finding that the petitioner failed to establish that he has a qualifying relationship as the child of a lawful permanent resident of the United States. In the

AAO's June 4, 2009 decision on appeal, the AAO concurred with the director's determination that the petitioner failed to establish the requisite qualifying relationship. The AAO, however, remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on February 24, 2010, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite qualifying relationship and eligibility based upon that relationship. The petitioner failed to respond to the NOID and the director denied the petition on December 20, 2010, finding that the petitioner failed to establish the requisite qualifying relationship and eligibility based upon that relationship. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. On January 20, 2011, the following documentation was received by the AAO from counsel: proof of the petitioner's stepfather's lawful permanent resident status; the petitioner's student records; affidavits from the petitioner's friends concerning the alleged abuse; a Form W-7, Application for IRS Individual Taxpayer Identification Number completed on behalf of the petitioner by his stepfather; tax documentation pertaining to the petitioner's mother and stepfather; a copy of a Form I-130, Petition for Alien Relative, listing the petitioner's stepfather as the petitioner and the petitioner's mother as the beneficiary; a copy of the petitioner's stepfather's social security card; and copies of documentation already in the record.

Upon review, we concur with the director's determination. The additional documentation submitted by counsel is noted. As discussed above, the director denied the instant petition because the petitioner failed to establish the requisite qualifying relationship and eligibility based upon that relationship. Neither counsel nor the petitioner provides a statement or brief which alleges any error of law or fact on the part of the director, or any other discussion regarding how the evidence submitted on certification addresses the director's reason for denying the petition. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act and his petition must be denied.

The petition will be denied for the reasons stated above. 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 December 20, 2010 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of December 20, 2010 is affirmed. The petition is denied.

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.