

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



B9

Date: **MAY 18 2011** Office: VERMONT SERVICE CENTER FILE: A94 473 152
EAC 07 050 50317

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.

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)(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 demonstrate that the petitioner's father's abuse was one central reason for her failure to file her petition before her twenty-first birthday. Accordingly, the director determined that the petitioner had not established the requisite qualifying relationship with a U.S. citizen parent and eligibility for immigrant classification based on such a relationship. On appeal, counsel submits a brief, a notarized statement from the petitioner, and copies of documentation previously submitted. Counsel asserts that the director erred in his findings that the petitioner had not established all of the eligibility requirements under section 204(a)(1) of the Act and that the abuse was at least one 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)(A)(iv) of the Act provides:

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.

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, according to her birth certificate, was born in that country on [REDACTED]. The petitioner's father is a citizen of the United States. The petitioner submitted three statements: an undated statement submitted at the time of filing; a notarized statement dated February 8, 2010, submitted in response to the director's December 8, 2009 request for evidence (RFE); and a notarized statement dated July 15, 2010, submitted on appeal. The petitioner stated that she entered the United States without inspection in February 1993, when she was ten years old. The petitioner reported that she had no memories of her father playing with her, hugging her, or comforting her when she was crying. She recounted several incidents of physical and mental abuse by her father until her parent's divorce in 1996 when she was 13 years old. The petitioner reported that when she was 20 years old, her father was ordered by a court judge to file the appropriate immigration paperwork for the petitioner and her siblings, and she relied upon her father to comply with the judge's order.

The petitioner filed the instant Form I-360 on her own behalf on December 8, 2006, when, according to her birth certificate, she was 24 years old. The director subsequently issued an RFE that her father's abuse was one central reason for her failure to file prior to her twenty-first birthday. The petitioner, through counsel, responded with the following: counsel's letter dated March 4, 2010; the petitioner's personal affidavit; an *Immigrant Power and Control Wheel* issued by the National Center on Domestic and Sexual Violence; statements from the petitioner's siblings, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]¹, describing their father's abuse; an unsigned draft of a Qualified Domestic Relations Order specifying March 5, 1996 as the "Marital Retirement Date" of her parent's marriage; a copy of an order filed on November 13, 2002, in the Nineteenth Judicial Circuit Court, Lake County, Illinois, ordering, in part, the petitioner's father to file for permanent residence for the petitioner and her siblings; and a copy of a receipt notice dated March 19, 1992, for an I-130 alien relative petition filed on the petitioner's behalf by her father.

The director denied the petition for failure to establish that the petitioner's father's abuse was a central reason for her filing delay. The director noted that the additional evidence did not include any discussion as to why the petitioner failed to file her petition before her twenty-first birthday and that unawareness of the self-petitioning provisions is insufficient to establish that the abuse was at least one central reason for the filing delay. The director further determined that because the petitioner failed to demonstrate her eligibility for the late-filing provision, she also had not established a qualifying relationship with her father and her eligibility for immediate relative classification based on their relationship.

¹ U.S. Citizenship and Immigration Services (USCIS) records show that [REDACTED]'s adjustment of status application was approved in 2006, based on her approved Form I-360 self-petition.

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 her father's abuse was a central reason for her failure to file the petition before her twenty-first birthday. Counsel further asserts that the petitioner established a qualifying relationship with her father and her corresponding eligibility for immediate relative classification.

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 petitioner has overcome the director's grounds for denial on appeal.

The Petitioner's Father's Abuse was a Central Reason for the Filing Delay

The record shows that the petitioner was subject to her father's extreme cruelty during her childhood and young adulthood. The petitioner credibly described numerous incidents of her father's physical and psychological violence against her, her siblings and her mother throughout her childhood. The petitioner, her brothers and sister also credibly recounted how their father used violence and their lack of immigration status as a means to control and manipulate them, their other siblings and their mother. For example, the record indicates that the petitioner's father threatened to report the petitioner, her mother and siblings to immigration authorities to prevent them from testifying against him in criminal court and that when her mother refused to cede her property in Mexico to him, her father did not attend the interview regarding their applications for lawful permanent residency. In her affidavit submitted on appeal, the petitioner further explains how her father used her lack of immigration status to manipulate her even after her parents divorced in 1996. In her second affidavit, the petitioner recounted in detail how her parents had ongoing disputes in family court over her father's responsibility to provide child support and follow through with their immigration cases. The record contains copies of two court orders issued on December 21, 2001 and November 13, 2002, just nine months before the petitioner's twenty-first birthday, which ordered the petitioner's father to complete the necessary documents and comply with all of the requirements to obtain lawful permanent residency for the petitioner, her mother and siblings. The record shows that the petitioner's father failed to comply with the court orders and on appeal, the petitioner credibly recounts how she continued to plead with her father to comply with the court orders and how her father made repeated, broken promises to sponsor her lawful permanent residency application through which he continued to control and manipulate her.

The director found no explanation in the record below regarding any connection between the petitioner's father's abuse and her failure to timely file her self-petition. Rather, the director noted that the petitioner's ignorance of the self-petitioning provisions alone was insufficient to establish her eligibility. Although the petitioner and her siblings explained how their ignorance of the relevant immigration laws was a factor in her failure to file a self-petition before turning 21, the record, as supplemented on appeal, demonstrates that the petitioner's father's abuse was a central reason for her filing delay. To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a self-petitioner need not show that the abuse was the only cause for the delay. Rather, to establish

that a parent's abuse was "at least one central reason for the filing delay," the self-petitioner must demonstrate, by a preponderance of the relevant, credible evidence, a nexus between the abuse and the filing delay that is more than incidental or tangential. The petitioner has met this burden of proof on appeal. Accordingly, the director's determination to the contrary is hereby withdrawn.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director erroneously determined that because the petitioner failed to establish that her father's abuse was a central reason for her filing delay, she also did not demonstrate a qualifying relationship with her father and her corresponding eligibility for immediate relative classification. Section 204(a)(1)(D)(v) of the Act permits late-filing for classification as an abused child under section 204(a)(1)(A)(iv) of the Act if the self-petitioner demonstrates that he or she met all the requirements of section 204(a)(1)(A)(iv) of the Act on the day before his or her twenty-first birthday and shows that the abuse was a central reason for the filing delay. These requirements are distinct. Failure to establish the latter does not mean that the self-petitioner was necessarily ineligible under the child self-petitioning provisions before his or her twenty-first birthday.

In this case, the record establishes both a qualifying relationship between the petitioner and her father and that the petitioner was eligible for immediate relative classification based on that relationship before she turned 21 years old. Accordingly, the petitioner has established her eligibility under section 204(a)(1)(A)(iv) of the Act and the director's determination to the contrary is hereby withdrawn.

Conclusion

As of the day before her twenty-first birthday, he petitioner was eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act. The instant petition was filed before the petitioner's twenty-fifth birthday and she has shown that her father's abuse was a central reason for her filing delay. Accordingly, the petitioner remains eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act pursuant to section 204(a)(1)(D)(v) of the Act. The appeal will be sustained and the petition will be approved.

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. The petitioner has met this burden.

ORDER: The appeal is sustained. The petition is approved.