

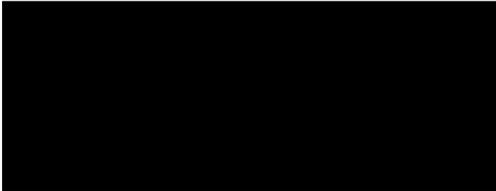
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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: SEP 15 2011 Office: VERMONT SERVICE CENTER

FILE:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, in part; the appeal will be dismissed and the petition will remain denied.

The petitioner is a native and citizen of Thailand who is seeking 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 the abused child of a United States citizen.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent because the petitioner's mother and former stepfather divorced before the petition was filed. The director also found that the petitioner had not established that she is eligible for immigrant classification based on a qualifying relationship with a citizen of the United States.

On appeal, counsel for the petitioner asserts that the petitioner is eligible for classification as an abused child because the relationship between the stepchild and the stepparent is not terminated upon divorce.

Applicable Law

For all of Title II of the Act, including these proceedings under section 204 of the Act, the term "child" is defined at section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), 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)(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 two 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 [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 citizen parent. For purposes of this clause, residence includes any period of visitation.

Section 204(a)(1)(J) of the Act further states:

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].

In these proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner was born in Thailand on February 14, 1994. The petitioner's biological mother married R-S-,¹ a U.S. citizen on October 9, 2002 in Thailand when the petitioner was eight years old. On June 8, 2004, the petitioner entered the United States on a K-4 visa as a child of the spouse of a United States citizen with authorization to remain in the United States until June 8, 2006. The petitioner's mother was granted lawful permanent resident status on February 26, 2007. The petitioner's mother and former stepfather were divorced on October 24, 2007.

The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on October 31, 2007, seven days subsequent to the termination of her mother's marriage to R-S-. The petitioner was 13 years old at the time of the divorce and the filing of the Form I-360 petition. The director determined that because the petitioner's mother and stepfather were divorced on October 24, 2007, no qualifying relationship existed between the petitioner and her stepfather as of the date of the filing of the petition. The director determined further that the petitioner had not established that she is eligible for immigrant classification based on a qualifying relationship with a citizen of the United States.

On appeal, counsel contends that the petitioner in this matter met the definition of a child at section 101(b)(1) of the Act when her biological mother married her stepfather and that the termination of her parent's marriage did not alter her qualifying relationship with her stepfather.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director determined that pursuant to section 204(a)(1)(A)(iv) of the Act, the termination of a marriage that created a stepparent/stepchild relationship prior to filing the Form I-360 terminates the qualifying relationship. The director's conclusion, however, is incomplete and shall be withdrawn because he failed to consider whether the petitioner had continued to maintain a relationship with her stepfather subsequent to the divorce. To remain eligible for immigrant classification as a child defined under section 101(b)(1)(B) of the Act despite the legal termination of the child's parent's and stepparent's marriage or their legal separation, a petitioner must establish that a family relationship has continued to exist as a matter of fact between the stepparent and stepchild. *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981).

¹ Name withheld to protect individual's identity.

Here, the petitioner has failed to demonstrate any continuing relationship with her stepfather subsequent to the termination of her mother's marriage to R-S- on October 24, 2007. In her August 26, 2007 declaration, the petitioner describes her stepfather's abuse, but she does not provide any information regarding her relationship, if any, with her stepfather after he abandoned their family. In her October 17, 2007 declaration, the petitioner's mother also discusses her former husband's abuse and states that he was negligent towards the petitioner as he never completed her immigration process. The petitioner's mother does not, however, discuss any continuing relationship between the petitioner and her stepfather.

In a psychological evaluation dated August 22, 2008, prepared by [REDACTED] indicated that she interviewed both the petitioner and the petitioner's mother. [REDACTED] noted the petitioner and her mother's report that in June 2006 R-S- did not return to the marital home for several weeks and when he did return he told the petitioner's mother that he no longer wished to be married and moved out of the home. The petitioner and her mother remained in the marital home without R-S- until the home was foreclosed on in April 2007.

The petitioner also submitted numerous letters from friends, neighbors and the petitioner's teachers who all praise the petitioner's character and many of whom discuss her stepfather's abuse and abandonment of the family. In her March 26, 2008 declaration, [REDACTED] a family friend, indicated that the petitioner's last contact with her stepfather was on April 24, 2007 when he asked the petitioner's mother to sign a divorce document. When the petitioner's mother did not sign the document, he became infuriated and refused to take the petitioner to her immigration appointment that day. [REDACTED] and the other affiants do not indicate that the petitioner had any ongoing relationship with her stepfather after he abandoned the family and divorced her mother.

Because the relevant evidence does not establish that a family relationship continued to exist in fact between the petitioner and her stepfather after he and the petitioner's mother were divorced, the petitioner no longer met the definition of a child of her stepfather on the date this petition was filed. Consequently, she has not established a qualifying parent-child relationship with her stepfather and her corresponding eligibility for immediate relative classification based on such a relationship, and she is ineligible for immigrant classification as an abused child under section 204(a)(1)(A)(iv) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375. The petitioner has not met that burden and the appeal will be dismissed.

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