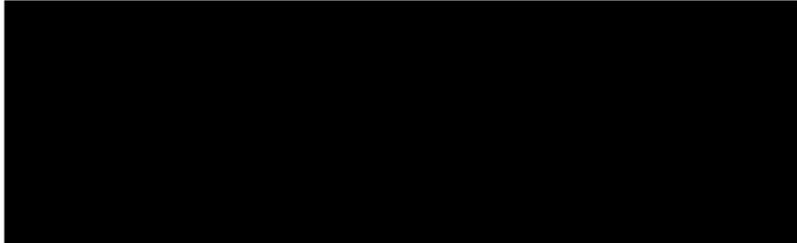


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**
PUBLIC COPY

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



B9

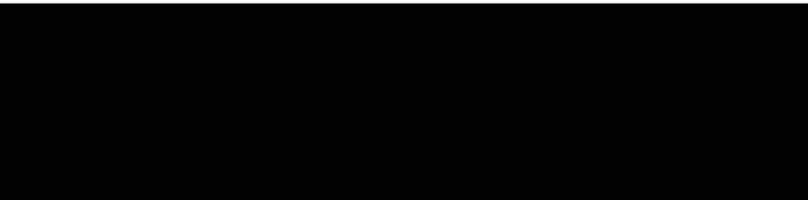
Date: **AUG 20 2012**

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:

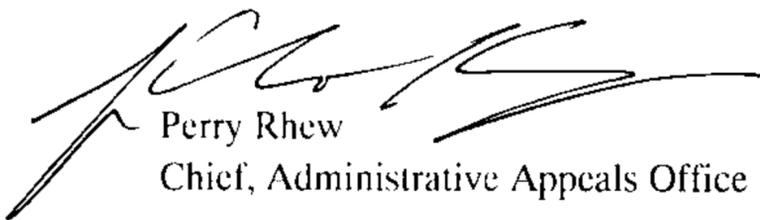


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by his United States citizen stepparent.

The director denied the petition for failure to demonstrate that the petitioner's stepmother subjected him to battery or extreme cruelty and that her abuse was one central reason for his failure to file his petition before his twenty-first birthday.

On appeal, counsel submits a brief and additional evidence. Counsel asserts that the director failed to consider all of the petitioner's relevant circumstances of his case and his "abundant equities." Counsel further asserts that the abuse was the central reason for the delay in filing the application. Counsel's claims and the evidence submitted on appeal do not, however, demonstrate that the extreme cruelty was one central reason for the delay in filing the petition.

Relevant Law and Regulations

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)(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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iv) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(e)(2), which states, in pertinent part:

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(e)(2)(i) further states:

Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

Pertinent Facts and Procedural History

The petitioner is a citizen of Trinidad and Tobago who was born on [REDACTED]. The petitioner entered the United States as a visitor on December 24, 1999. In 2004, when he was 17 years old, his father married [REDACTED] a U.S. citizen. The petitioner filed the instant Form I-360 on January 10, 2011 when he was 24 years old. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's reason for the delay in filing the I-360 and his stepmother's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility and the petition was denied. Counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that R-B- did not subject the petitioner to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. The relative evidence in the record contains: the petitioner's affidavits; a letter from his brother [REDACTED]; letters from his friends [REDACTED]; and a psychological evaluation from certified clinical psychopathologist [REDACTED] LMHC, CCP. FAPA.

In his first affidavit, the petitioner stated his relationship with [REDACTED] was great during the first few years and that their home was a loving and happy place. He stated that after his father had a heart attack in July of 2007, [REDACTED] became aggressive towards him and demanded that he contribute more to the household finances. The petitioner further stated that [REDACTED] would not let him watch television freely and became angry if there were dirty dishes in the sink. In his second affidavit, submitted in response to the RFE, the petitioner stated that his relationship with [REDACTED] "was okay during the first few years" and that their home environment was "peaceful but not perfect." He reiterated that the situation at home changed drastically after his father suffered a heart attack in July of 2007, after he had turned 21. The petitioner stated that R-B- stole a Garmin GPS from him to give to her son-in-law and yelled at him for playing video games. He stated that she locked him out of the house for coming home late.

¹ Name withheld to protect individual's identity.

The director correctly concluded that the letters from the petitioner's brother and his friends were vague and did not provide specific, detailed information demonstrating that the petitioner was subjected to battery or extreme cruelty by [REDACTED]. In a brief letter dated January 5, 2011, [REDACTED] stated that the petitioner moved in with him a little over two years ago due to the petitioner's problems with [REDACTED]. This would mean that the petitioner began living with Mr. [REDACTED] at the end of 2008 or the beginning of 2009. Mr. [REDACTED] does not indicate that he witnessed any specific acts of abuse committed by [REDACTED]. The petitioner's subsequent statements do not explain this discrepancy regarding when the petitioner left his residence with [REDACTED] and the claimed abusive situation.

[REDACTED] submitted letters in response to the RFE as well as on appeal. Originally, all three stated that the petitioner's relationship with [REDACTED] was fine but changed after the petitioner's father suffered from a heart attack. In their second letters, all three attest to different occasions in the summer of 2006 where they witnessed [REDACTED] verbally abuse the petitioner. Mr. [REDACTED] then both go on to state that things were fine until the petitioner's father had a heart attack. The petitioner's friends do not explain in their second letters why their accounts of the petitioner's relationship with [REDACTED] are different from their initial letters.

In his psychological evaluation dated July 23, 2011, Mr. [REDACTED] concluded that the petitioner was "emotionally affected by a highly dysfunctional family atmosphere in which he was, like his father, verbally and emotionally abused by his former stepmother." While we do not question Mr. [REDACTED] professional expertise, his assessment of the abuse is based on his interview of the petitioner, which, as described in his evaluation, provides no further, substantive information demonstrating that the actions of [REDACTED] constituted battery or extreme cruelty as defined at 8 C.F.R. § 204.2(e)(1)(vi).

The relevant evidence submitted below did not establish that the petitioner was a victim of abuse committed by [REDACTED]. The letters from his brother and friends were vague and did not address specific incidents of abuse. [REDACTED] gives an account that directly contradicts the petitioner's assertions. Upon appeal, the petitioner submitted letters from his friends that are inconsistent with their initial letters and no explanations were given for these inconsistencies. Therefore none of the statements are considered credible.

When viewed in the aggregate, the record does not demonstrate that the petitioner's stepmother ever battered him or that her behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(e)(1)(vi). Accordingly, the petitioner has not established that his stepmother subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iv) of the Act.

Filing Delay

Even if the petitioner had established the requisite battery or extreme cruelty, the appeal would still not be sustained because the petitioner has not shown that such abuse was a central reason for his failure to file the petition before his twenty-first birthday. On the Form I-360, the petitioner stated that he ceased living with [REDACTED] in 2007. In his November 30, 2010 statement, the petitioner explained that his relationship with his stepmother was "great during the first few years" and that

the home environment was peaceful, loving, and happy. He recounted that after his father suffered from a heart attack on July 18, 2007, [REDACTED] attitude towards them changed and she became abusive. In the petitioner's September 2, 2011 statement in response to the RFE, the petitioner recounted that he lived with his father and [REDACTED] until April of 2010. He also stated that [REDACTED] was abusive before his father's July 2007 heart attack. He recounted that his brother [REDACTED] resided with them as well but moved out by the end of 2004. The petitioner frequently stayed with his brother and there was a period when he stayed more with his brother than with his father. The petitioner claimed that he stopped this practice after his father's heart attack and he remained living with his father because he could not bear to leave him with [REDACTED] alone. On appeal, the petitioner submits a third statement and recounts that the abuse started at the beginning of the marriage. He explains that his brother moved out of the house after nearly a year to escape [REDACTED]'s mistreatment.

While the abuse need not be the predominant cause of the filing delay, it must be "at least one central reason" for the delay. See Section 204(a)(1)(D)(v) of the Act. On appeal, counsel claims that the abuse was a central reason in the filing delay because the petitioner did not know he had options and that he was afraid he was going to get "kicked out of his home." Counsel further asserts that the petitioner was afraid to apply for any immigration benefits because he was afraid that [REDACTED] would intercept the mail. Counsel asserts that the discrepancies in the record are attributable to a "lapse in memory" and that the "details were a little fuzzy" because the petitioner has tried to block out the memories of living with [REDACTED]. Even taking into consideration and accepting the petitioner's most recent recollection of the events that happened from 2004 to 2010, there is a time period when, according to the petitioner's statements, he lived with his brother at least part of the time from November of 2004 to July of 2007. For a brief unspecified period, the petitioner recounted that he lived mainly with his brother. Counsel fails to articulate any nexus between [REDACTED]'s claimed abuse and the petitioner's failure to file prior to his 21st birthday and then for the six months after his 21st birthday, prior to moving back in with his father and [REDACTED] on a full time basis in July of 2007.

As the petitioner has not demonstrated that his [REDACTED] abuse was at least one central reason for his filing delay, he is ineligible for the late-filing waiver at section 204(a)(1)(D)(v) of the Act. He consequently is ineligible for immigrant classification as the abused child of a U.S. 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; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.