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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-300
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B9

DATE: **AUG 22 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:

PETITION: Petition for Immigrant Abused Child Spouse 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:

SELF-REPRESENTED

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 Director, Vermont Service Center, (“the 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 petition will remain 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 the battered child of a United States citizen (USC).

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].

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 French Guiana on January 9, 1994. He entered the United States on December 27, 2001 on a visa waiver with authorization to remain in the United States until March 26, 2002. The petitioner's biological father married H-H-¹ a U.S. citizen on August 29, 2003 in the State of New Jersey when the petitioner was nine years old. The petitioner's father and former stepmother were divorced on November 9, 2010.

The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on November 15, 2010, six days subsequent to the termination of his father's marriage to H-H-. The petitioner was 16 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 father and stepmother were divorced on November 9, 2009, no qualifying relationship existed between the petitioner and his stepmother as of the date of the filing of the petition. The director determined further that the petitioner had not established that he is eligible for immigrant classification based on a qualifying relationship with a citizen of the United States. The director referenced, without discussing, the petitioner's failure to establish that he had been subjected to battery or extreme cruelty perpetrated by his USC stepparent.

On appeal, the petitioner submits a copy of a previous AAO non-precedential decision in which the AAO determined that a Form I-360 filed by an alien who was over the age of 21, who was seeking immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Act as the battered child of a USC, had established eligibility because she had met all requirements prior to her twenty-first birthday and the abuse she suffered was a central reason for her failure to file before she reached 21.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Preliminarily, the petitioner's submission of a non-precedential AAO decision does not establish the petitioner's eligibility. The petitioner has not shown that the facts or law pertinent to the instant petition are analogous to those in the unpublished decision. The petitioner in this matter was not yet 21 when he filed the Form I-360; thus the discussion regarding eligibility of an individual over the age of 21 seeking immigrant classification as a child is inapplicable to the matter at hand. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not *similarly binding*.

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 his stepmother 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

¹ Name withheld to protect individual's identity.

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).

Here, the petitioner has failed to demonstrate any continuing relationship with his stepmother subsequent to the termination of his father's marriage to H-H- on November 9, 2010. In his October 14, 2011 declaration, the petitioner describes his stepmother's abuse when he was eight years old. He stated in section B on the Form I-360 sent in response to the director's RFE that he resided with his stepmother from September 2003 until June 2004. In a September 30, 2011 affidavit, the petitioner's claimed guardian declared that the petitioner had been kicked out of his stepmother's home when he was only eight years old and had never returned to the stepmother's household. In a September 27, 2011 statement submitted by the petitioner's aunt, she also indicates that the petitioner was about eight-years old when he lived with his father and H-H- and that she and her husband moved to New York to assist the petitioner. In a psychological evaluation dated October 10, 2011, [REDACTED] indicated that the petitioner's stepmother "threw him out after living with them for approximately eight months," and that the petitioner was currently living with his aunt in New York. Neither the petitioner nor the individuals who submitted statements on his behalf discuss any continuing relationship between the petitioner and his stepmother subsequent to being removed from her home when he was approximately eight years old.

Because the relevant evidence does not establish that a family relationship continued to exist in fact between the petitioner and his stepmother after the petitioner's father and stepmother were divorced, the petitioner no longer met the definition of a child of his stepmother on the date this petition was filed. Consequently, he has not established a qualifying parent-child relationship with his stepmother and his corresponding eligibility for immediate relative classification based on such a relationship. Accordingly, he 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 his 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.