

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



Bq



Date: DEC 17 2012 Office: VERMONT SERVICE CENTER File

IN RE: Self-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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition. The petitioner filed an untimely appeal which the director treated as a motion to reconsider. The director reconsidered the previous decision and again denied the petition. 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by her U.S. citizen parent.

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. On appeal, the petitioner submits a brief and a copy of her previously submitted affidavit.

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 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 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].

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.

In these proceedings, the petitioner bears the burden of proof to establish her 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 is a citizen of Honduras who was born on October 23, 1987. The petitioner entered the United States on January 24, 1998 as a nonimmigrant visitor. In 1999, when she was 11 years old, her mother married [REDACTED], a United States citizen. The petitioner's mother and her stepfather divorced on April 19, 2004, when the petitioner was 16 years old. The petitioner filed the instant Form I-360 on October 17, 2008, when she was 20 years old.

On appeal, the petitioner contends that United States Citizenship and Immigration Services (USCIS) erroneously interpreted the law as requiring that the parent of an abused child stay married to the child's abusive step-parent and that such an interpretation goes against the congressional intent of the Violence Against Women Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

In this case, the petitioner has not shown that she had a qualifying relationship with a U.S. citizen parent at the time the Form I-360 was filed. The petitioner's mother and her former stepfather were married on June 16, 1999, and they subsequently divorced on April 19, 2004, when the petitioner was 16 years old. To remain eligible as a child under section 101(b)(1)(B) of the Act despite a divorce or legal termination of the marriage that created the stepparent/stepchild relationship, 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).

Here, the petitioner has failed to demonstrate any continuing relationship with her stepfather. The petitioner declared in her affidavit that she saw [REDACTED] at her mother's funeral in 2004 and that the only thing he said to her was "sorry." The petitioner's previous attorney stated in her October 15, 2008, submission that the petitioner "has not maintained a relationship with [REDACTED]." The petitioner does not indicate that she maintained any contact with her former stepfather either after they stopped living together or after the divorce hearing. Accordingly, the petitioner has not established that a family relationship continued to exist as a matter of fact between her and her stepfather after her parents divorced in 2004. Thus, the petitioner did not have a qualifying relationship at the time she filed her

¹ Name withheld to protect individual's identity.

Form I-360 on October 17, 2008, and she is therefore ineligible for immigrant classification as an abused child under section 101(b)(1) of the Act.

On appeal, counsel acknowledges the holding in *Matter of Mowrer*, but states that it is inapplicable to Form I-360 petitions filed by abused children and is only relevant in the context of alien relative petitions (Form I-130). Counsel states further that requiring a petitioner to maintain a relationship with the abuser goes against legislative intent.

However, the statutory language clearly requires the petitioner to meet the definition of a stepchild. *See Caminetti v. United States*, 242 U.S. 470, 485 (1917) (interpretation not required where statutory language is clear). The amendments to the abused child self-petitioning provisions further show that all such self-petitioners must meet the statute's definition of a child. The self-petitioning provisions for abused children were first enacted in 1994. Section 40701(a) of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (Sept. 13, 1994). In 2000, Congress amended these provisions to extend eligibility to children whose abusive parent had, within the past two years, lost U.S. citizenship or lawful permanent residency due to an incident of domestic violence. Victims of Trafficking and Violence Protection Act of 2000, Section 1503(b)(2), Title V, Division B, Pub. L. No. 106-386 (Oct. 28, 2000). At the same time, Congress provided age-out protections for self-petitioning children (and derivative children of abused spouses) whose petitions were filed prior to their twenty-first birthday, but who had not obtained lawful permanent residency by that date. *Id.* at section 1503(d)(2) (adding subsections 204(a)(1)(C) and (D) of the Act). In 2005, Congress extended eligibility even further to protect individuals who were abused as children, but who failed to file before turning 21, in central part, due to the abuse. Section 805(c), Violence Against Women and Dept. of Justice Reauthorization Act of 2005, Pub. L. 109-162 (Jan. 5, 2006). Counsel fails to point to any specific language in these statutory amendments to support her claim that a petitioner is not required to show that she meets the definition of a step-child. At no point in the past 18 years has Congress exempted abused children from establishing that they have a qualifying relationship with a U.S. citizen or lawful permanent resident at the time of filing. We recognize the difficulties that this requirement may present for a stepchild self-petitioner; however, USCIS lacks the authority to waive the statutory requirements at sections 101(b)(1)(B) and 204(a)(1)(A)(iv) of the Act.

Similarly, counsel's argument that the holding in *Matter of Mowrer* does not apply in the context of an abused child self-petition is without merit. The definition of a child at section 101(b) of the Act applies to all sections of Title II of the Act, including all family-based immigrant petitions filed under section 204 of the Act. Section 101(b) of the Act; 8 U.S.C. § 1101(b). Thus, the holding in *Mowrer* is applicable to self-petitions for abused children as it relates to meeting the definition of a child at section 101(b) of the Act.

Contrary to counsel's assertion on appeal, applying *Matter of Mowrer* to abused stepchild self-petitions does not require a stepchild to endure further abuse. A stepparent-stepchild relationship may continue as a matter of fact where the stepchild has, for example, left the abusive home, but retained some contact with the abusive stepparent through court or social service agency proceedings or in other circumstances. If USCIS did not apply *Matter of Mowrer* to cases such as this one, stepchildren such

as the petitioner in this case would be disqualified on the date their parents divorced, as the statute requires the qualifying relationship to exist at the time the self-petition is filed (or as of the day before the self-petitioner's twenty-first birthday for petitions filed under the exception at section 204(a)(1)(D)(v) of the Act).

Accordingly, the petitioner has failed to establish that she had a qualifying relationship with a U.S. citizen at the time that she filed her I-360 petition. On the date of filing, the petitioner did not meet the definition of a child at section 101(b) of the Act because she had no familial relationship with her stepfather after the divorce and was consequently ineligible for immediate relative classification based on such a relationship. Thus, the petitioner is ineligible for immigrant classification as an abused child pursuant to section 204(a)(1)(A)(iv) of the Act.

Conclusion

The petitioner has failed to show that she had a qualifying relationship at the time she filed her I-360 petition. At the time of filing, she did not meet the definition of a child at section 101(b)(1)(B) of the Act and she is ineligible for immigrant classification as the abused child of a U.S. citizen under section 204(a)(1)(A)(iv) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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