

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

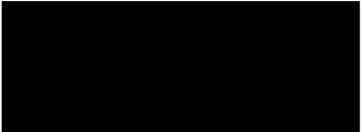


U.S. Citizenship
and Immigration
Services



B9

Date: **DEC 17 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:

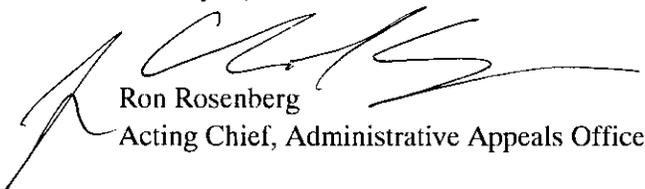


INSTRUCTIONS:

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 with the field office or service center that originally decided your case by filing a 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iv) of the Act provides that 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) of the Act 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 of Homeland Security] 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)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . 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 this case, the director initially denied the petition on October 20, 2009 with a determination that the petitioner had not established that she had a qualifying relationship with a United States citizen stepparent because the marriage between the petitioner's biological mother and her stepfather dissolved prior to the filing of her Form I-360 petition. In its June 24, 2010 decision on the appeal, the AAO stated that the appropriate inquiry in this matter is whether a family relationship continued to exist as a matter of fact between the petitioner and her stepparent subsequent to the termination of the marriage by divorce. The AAO reviewed the evidence and determined that the petitioner had not established that a family relationship continued to exist subsequent to the divorce. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006).

Upon remand, the director issued a NOID on April 16, 2012 which informed the petitioner that she had not submitted sufficient evidence to establish that a family relationship continued to exist subsequent to the petitioner's biological mother's divorce from the petitioner's stepparent. The NOID granted the petitioner 33 days to submit a response and any additional evidence. The petitioner did not respond to the NOID. Accordingly, the director denied the petition on August 20, 2012 on the grounds cited in the NOID and certified the decision to the AAO for review.

The director's Notice of Certification informed the petitioner that she had 30 days to submit a brief to the AAO. To date, the AAO has received nothing further from the petitioner. Accordingly, the August

20, 2012 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that she had a qualifying relationship with a United States citizen stepparent and was eligible for immediate relative classification based on such a relationship. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act and her petition must be denied.

The denial of the petition will be affirmed for the above stated reasons. 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 not sustained that burden.

ORDER: The director's decision of August 20, 2012 is affirmed. The petition is denied.