

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

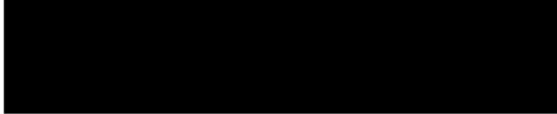


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Date: Office: VERMONT SERVICE CENTER

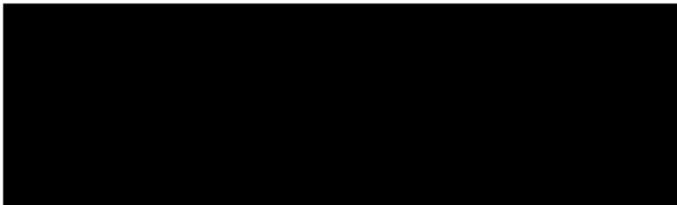
FILE: 

DEC 20 2012

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:

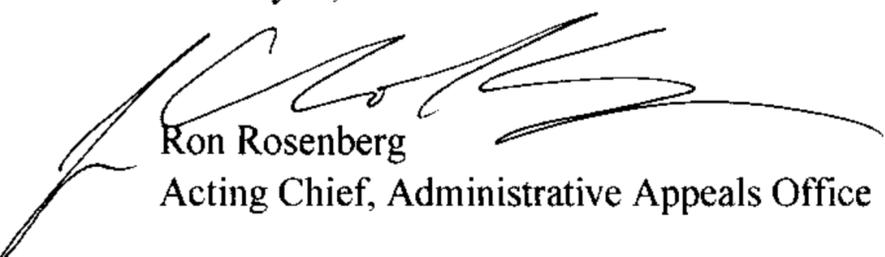


INSTRUCTIONS:

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. 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 remain denied.

Section 204(a)(1)(A)(iv) of the Act provides that an alien who is the child of a United States citizen, 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, may self-petition for immigrant classification if the alien demonstrates that he or she is a person of good moral character, is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), resides, or has resided in the past, with the citizen parent, and was battered or subjected to extreme cruelty perpetrated by the alien's parent. Section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv).

Here, the director initially denied the petition on December 8, 2009, because the petitioner did not establish that she had a qualifying relationship as the child of a U.S. citizen or that she was a person of good moral character. In the June 22, 2010, decision on appeal, the AAO found that the petitioner submitted sufficient evidence on appeal to show she was a person of good moral character, but concurred with the director's determination that the petitioner had not shown that she had a qualifying relationship with a U.S. citizen parent. The AAO remanded the petition for the petitioner to submit evidence that 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 and for the issuance of a new decision.

Upon remand, the director issued a NOID on December 23, 2011, which informed the petitioner that she had not submitted sufficient evidence to show a qualifying relationship as the child of a U.S. citizen. Counsel responded to the NOID with a brief and additional evidence. The director found that while the petitioner had shown her parents had entered into marriage in good faith, she did not establish that she maintained a relationship with her stepfather subsequent to the divorce, and denied the petition on August 20, 2012. The director certified the decision to the AAO for review. The 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.

In our prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, counsel submitted a brief, copies of previously submitted evidence, evidence of a good faith marriage between the petitioner's mother and her stepfather, the petitioner's Order of Name Change and an award issued to her in her new name, an undated birthday card from the petitioner to her stepfather, and a copy of an AAO decision in an unrelated case. The evidence submitted in response to the NOID does not establish that a family relationship continued to exist as a matter of fact between the petitioner and her stepfather after her parents' divorce, as required by *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981). The name change evidence is dated prior to the petitioner's mother and stepfather's divorce, and therefore does not establish a continuing relationship in fact after the termination of the marriage. Similarly, the birthday card is undated and does not show a continuing relationship after termination of the

marriage. As such, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen parent, and the petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act. Accordingly, the August 20, 2012, decision of the director denying the petition will be affirmed.

In his brief responding to the NOID, counsel asserted that United States Citizenship and Immigration Services (USCIS) erroneously requested evidence that the petitioner maintained a relationship in fact with her stepfather after the termination of his and her mother's marriage, and cites to a 2010 AAO decision in support of this contention. The cited AAO decision is unpublished and therefore not precedent, nor does it apply to this case as the decision related to the late-filing provision at section 204(a)(1)(D) of the Act, which is inapplicable here because the petitioner was 20 years old when she filed her Form I-360. More importantly, counsel misstates the holding in that unpublished AAO decision. The AAO did not find that a continuing relationship was unnecessary, as counsel contends, but rather found the opposite - 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." AAO decision at 4. The AAO did not sustain the appeal in that case, but rather remanded the matter to provide the petitioner with the opportunity to submit evidence that the stepparent-child relationship continued after the parents' divorce.

The petition will remain denied for the reasons stated above. 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. 369, 375 (AAO 2010). The petitioner has not sustained that burden.

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