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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



B9

Date: FEB 03 2012 Office: VERMONT SERVICE CENTER

File: 

IN RE: 

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)

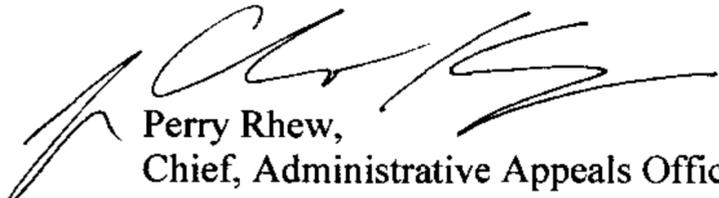
ON BEHALF OF PETITIONER: Self-represented

**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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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,

  
Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center denied the immigrant visa petition (Form I-360) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot because the petitioner remains a derivative beneficiary of her mother's approved immigrant visa petition. The matter will be returned to the director for further action.

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 United States citizen stepparent.

The director denied the petition for failure to establish a qualifying parent-child relationship because the petitioner's mother and stepfather were divorced before this petition was filed. On appeal, the applicant contends that former counsel failed to timely file the required petition and documentation.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, was born on August 7, 1993 and entered the United States on or around September 15, 1993 without inspection. Her mother married C-B-,<sup>1</sup> a U.S. citizen, on March 29, 2003, and the marriage legally terminated upon finalization of a divorce on December 9, 2005. The petitioner filed the instant Form I-360 on April 26, 2010. After considering the evidence of record, the director denied the petition on March 31, 2011.

U.S. Citizenship and Immigration Services (USCIS) records show that, in 2007, the petitioner's mother filed a Form I-360 self-petition based upon the abuse of C-B-, and listed the petitioner as her daughter at Part 8 of the petition.<sup>2</sup> Her Form I-360 was approved on January 9, 2008, when the petitioner was 14 years of age. The petitioner subsequently filed an Application to Adjust Status (Form I-485), which the director denied on May 5, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As the petitioner remains a derivative beneficiary of her mother's approved immigrant visa petition, the instant petition appears to have been filed in error and the appeal will be dismissed as moot.

#### *The Petitioner Remains Eligible for Immigrant Classification under the Relevant Law*

The instant petition was filed under section 204(a)(1)(A)(iv) of the Act, which provides self-petitioning provisions for children who have been subjected to battery or extreme cruelty by their U.S. citizen parent. Children who qualify as derivative beneficiaries of their alien parent's self-petition approved under the provisions for abused spouses of U.S. citizens at section 204(a)(1)(A)(iii) of the Act do not need to file their own Form I-360 for classification under section 204(a)(1)(A)(iv) of the Act. *See* Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C.

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> *See* Prima Facie Determination on Form I-360, EAC 07 077 50330.

§ 1154(a)(1)(A)(iii)(I) (providing for immigrant classification of the alien “and any child of the alien”). Such children remain derivative beneficiaries eligible to apply for adjustment of status if they are in the United States. Sections 101(a)(51)(A) and 245(a) of the Act, 8 U.S.C. §§ 1101(a)(51)(A), 1255(a).

As the petitioner remains eligible for immigrant classification, further pursuit of the matter at hand is moot. Consequently, the appeal will be dismissed and the matter returned to the director for further processing.

**ORDER:** The appeal is dismissed as moot because the petitioner remains eligible for immigrant classification. The matter is returned to the Vermont Service Center director for further action in accordance with the foregoing discussion.