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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 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9

DATE: MAR 09 2012 OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: ESTHER FELIX

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.

Thank you,

A handwritten signature in black ink, appearing to read "Jerry Rhew".

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (“the director”) denied the immigrant visa petition and affirmed his decision in response to a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by her by her father, a citizen of the United States.

The director denied the petition on the basis of his determination that because the petition was filed after the petitioner reached the age of 21, and the petitioner did not demonstrate that her father’s abuse was one central reason for her delay in filing the petition, she had failed to establish the existence of a qualifying parent-child relationship with a citizen of the United States. On appeal, counsel submits an appellate brief reasserting the petitioner’s eligibility.

Applicable Law

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, the following:

An alien who is the child of a citizen of the United States, or who was the 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 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 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)(D)(v) of the Act further provides:

For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. . . .

Section 204(a)(1)(J) of the Act further states the following:

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].

Pertinent Facts and Procedural History

The petitioner is a citizen of the Dominican Republic who was born in that country on December 4, 1984. She entered the United States on April 3, 1995. The petitioner filed the instant Form I-360 on July 21, 2008, when she was 23 years of age. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to his request for additional evidence, the director denied the petition on August 23, 2010. On May 12, 2011, the director affirmed his decision denying the petition.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's ground for denying this petition.

The Petitioner is Eligible under the Late-Filing Provisions for Self-Petitioning Children

In her April 25, 2008 and January 28 and February 1, 2010 statements submitted below, the petitioner described in probative detail the battery and extreme cruelty perpetrated by her father against her over a period of several years. She claimed that she "can sincerely say that the delay in filing was mostly caused by my trying to recover from [my] father's abuse." According to the petitioner, her father's abuse began during her childhood in the Dominican Republic, continued after the family immigrated to the United States, and persisted into her adulthood. She stated that although she received help as a young adult, she was by that time, "a mess" as a result of the abuse. She had experienced a lifetime of abuse by that point and, in addition to the abuse perpetrated by her father directly, she witnessed her father physically and psychologically abuse her mother and was also sexually abused as a child and raped when she was sixteen. Although her father filed two separate immigrant petitions on her behalf, he ultimately withdrew both petitions. According to the petitioner, he withdrew the first petition when she was sixteen years of age in retaliation for court testimony she provided regarding his abuse. She claimed that she and her father reconciled briefly in 2005, and that he filed another immigrant petition on her behalf. However, he withdrew it shortly thereafter, and his attorney notified the petitioner of the petition's withdrawal the day after she turned 21. The petitioner explained that when she contacted a family friend to ask for an affidavit describing abuse perpetrated by her father, her father exacted revenge on the petitioner by punishing her mother. According to the petitioner, her brother called her mother, at the direction of their father, and told her that she was no longer his mother.

The petitioner also submitted letters from friends and family members. In her January 14, 2010 letter, the petitioner's mother described an incident during which the petitioner's father tried to strangle the petitioner with a telephone cord and claimed that although the abuse has ended, the petitioner continues suffering from the consequences of the abuse. [REDACTED] the petitioner's

maternal aunt, described how the petitioner's father used her immigration status to control the petitioner in her December 18, 2009 letter, claiming that he called the petitioner and threatened to have her deported. She also claimed that he refused to sponsor her immigrant petition unless she would agree to stay away from her mother. [REDACTED] a family friend, claimed in her January 13, 2010 letter that although the petitioner's father did file an immigrant petition on her behalf in 2005, he soon began looking for any excuse to withdraw in order to humiliate her. [REDACTED] and [REDACTED] who resided with the petitioner in shelters, voiced their opinions that the petitioner was in fact abused. [REDACTED] the family's former pastor, stated that he personally witnessed the petitioner's father physically and verbally abusing the family.

The record also contained multiple letters from medical and social services personnel who have assisted the petitioner. [REDACTED] a case manager at [REDACTED] at [REDACTED] stated in her January 20, 2010 letter that she has known the petitioner since 2006 and that in her opinion, the petitioner's initial inability to move forward with her life was related to trauma she had experienced as a result of her father's abuse. She added that the petitioner at one point decided not to proceed with the petition because she wrongly, but sincerely, believed her father would admit to his wrongdoing and that he would reestablish a relationship with her.

[REDACTED] for Comprehensive Care, stated in her January 27, 2010 letter that although she personally only began working with the petitioner in 2009, the petitioner has a long history with her agency, and that in her opinion the abuse to which the petitioner was subjected was "very bad" and the decision to file the instant petition "was very difficult for her."

[REDACTED] for the [REDACTED] stated in her November 16, 2009 letter that she began counseling the petitioner in January 2007. [REDACTED] stated that the petitioner was sad and depressed during the period she counseled her, that the petitioner told her that her father had emotionally and physically abused her, and described an encounter during which the petitioner told her, in tears, that although her father had filed an immigrant petition for her, he withdrew it shortly before her twenty-first birthday.

In her January 7, 2010 letter, [REDACTED] stated that she has been treating the petitioner since July 25, 2008 and that she presented with severe Post Traumatic Stress Disorder (PTSD), major depression, and insomnia. The documentation from [REDACTED] confirmed these diagnoses and listed the medications he has prescribed the petitioner in order to manage her conditions. [REDACTED] further confirms the petitioner's diagnosis of PTSD and major depressive disorder in her psychological evaluation submitted on appeal, and adds that the petitioner experiences flashbacks to incidents of abuse perpetrated by her father.

The director found that although the relevant evidence shows that the petitioner suffers from depression, hopelessness, and low self-esteem, she failed to establish that her father's abuse was one central reason for her delay in filing the instant petition until after she reached the age of 21. The director stated that the petitioner's statements indicate she knew from an early age that her father's abuse was unacceptable and he noted that a protective order was issued against her father in 2000, when she was sixteen years of age. He questioned why, given that a protective order was issued,

the petitioner had waited so long to file the instant petition. The director also noted that the petitioner had testified against her father in court and ceased living with him long before reaching the age of 21, and stated that she had sought and received treatment for her problems prior to that point, as well. Accordingly, he found that the petitioner had failed to demonstrate a link between her late filing of the petition and the abuse perpetrated by her father.

Counsel notes on appeal that there is no evidence in the record to suggest that the petitioner's physical separation from her father, subsequent engagement in the court process, and procurement of the protective order restored her mental health following such a long period of abuse. Counsel also addressed the difficulty faced by the petitioner in deciding to file the instant petition, and in rebuttal to the director's statements made with regard to the therapy received by the petitioner prior to reaching the age of 21, counsel asserts on appeal that most of it was court-sponsored, and that its intent was to monitor visitation between the petitioner and her father; they were not counseling sessions. Although she concedes that the petitioner did participate in several counseling sessions prior to turning 21, counsel argues that the director is mistaken to conclude that "four visits with a caseworker, over two years, rendered her capable to file" the instant petition.

When considered in the aggregate, the relevant evidence establishes that the abuse was a central reason for the filing delay. The petitioner relied upon her father to file an alien relative petition on her behalf on more than one occasion and has continued to attend therapy sessions to address her abusive relationship with her father. The petitioner, therefore, has shown that she meets the requirements of section 204(a)(1)(D)(v) of the Act and consequently has established that she had a qualifying relationship with a citizen of the United States and that she was eligible for immigrant classification based upon that relationship, pursuant to section 204(a)(1)(A)(iv) of the Act. She is thus eligible for immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Act and her petition will be approved.

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). She has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.