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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

[redacted]

Date: MAY 09 2012 Office: VERMONT SERVICE CENTER

[redacted]

IN RE: Petitioner: [redacted]

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed. The petition will remain denied.

The petitioner seeks immigrant classification pursuant to 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 battered or subjected to extreme cruelty by his United States citizen stepparent.

The director denied the petition on July 21, 2011, determining that the petitioner had not established a qualifying relationship at the time of filing the petition. On appeal, the petitioner submits a statement and other documentation.

Applicable Law and Regulations

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 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)(D)(v) of the Act provides a late-filing waiver for individuals meeting the following requirements:

> 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

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[1] The petitioner submitted two Forms I-290B, Notice of Appeal or Motion, including the exact same information. The Vermont Service Center assigned two different receipt numbers [redacted] and [redacted] to the Forms I-290B. The petitioner notes that he received two separate decisions on the matter. It appears the petitioner submitted appeals for the denial of the Form I-360 and the denial of the Form I-485 that had been filed with the Form I-360. However, no appeal lies from the denial of the Form I-485 and thus the appeal in that matter will be rejected in a separate decision.

> 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. . . .

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Jamaica who was [redacted] The petitioner entered the United States on March 1, 2000 as a visitor with temporary authorization to remain in the United States until August 30, 2000. The record shows that the petitioner filed several Forms I-485, Application to Register Permanent Residence or Adjust Status, which were either rejected or denied. On December 30, 2002, the petitioner's mother filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant,[2] which was approved on or about April 16, 2003. The petitioner states that he was listed as a derivative on his mother's Form I-360. However, as he was over the age of 21 when his mother's Form I-360 was filed, he was not eligible for derivative status as a child. On October 18, 2010, the petitioner filed the instant Form I-360 as the child of an abusive stepparent. The director determined that the petitioner was not a child, as defined at section 101(b)(1) of the Act, and that the petitioner had not filed the petition prior to his twenty-fifth birthday; thus, pursuant to section 204(a)(1)(D)(v) of the Act, he was not eligible for a late-filing waiver. Accordingly, the director denied the Form I-360 petition as the petitioner had not established a qualifying relationship when the petition was filed.

On appeal, the petitioner asserts that he was subjected to mental and emotional cruelty perpetrated by his stepfather and that he is protected under the VAWA (Violence Against Women Act) because his petition was filed when he was 22 years old.

The Petitioner is not Eligible for the Late Filing Provision at section 204(a)(1)(D)(v) of the Act

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, establishes that the petitioner was not eligible to file a Form I-360 as the child of an abusive stepparent. Section 204(a)(1)(D)(v) of the Act specifically requires a petitioner to file a Form I-360 before he reaches the age of 25. In this matter, the petitioner filed the Form I-360 on October 18, 2010 after he turned 25 years old. Accordingly, he no longer meets the definition of a child at section 101(b)(1)(B) of the Act, is ineligible for a late-filing waiver pursuant to section 204(a)(1)(D)(v) of the Act, and is ineligible for immigrant classification as the abused child of a United States citizen under section 204(a)(1)(A)(iv) of the Act.

The petitioner's assertion that his petition was filed when he was 22 years old may refer to the petition filed by his mother on December 30, 2002; however, the petition filed by his mother

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[2] Although the petitioner provides an August 9, 2011 letter from [redacted] stating that the petitioner's mother submitted a Form I-360 battered spouse petition in 2000, Service records do not show a Form I-360 filed by the petitioner's mother prior to December 30, 2002. The August 9, 2011 letter includes an attachment, dated February 27, 2003, wherein the [redacted] representative noted that the petitioner's mother had been advised that the petitioner would most likely not qualify as he was over the age of 21 and would be considered an adult.

although improperly listing him as a derivative is not a petition filed by the petitioner. The petitioner did not file a Form I-360 until October 18, 2010, when he was 30 years old. As observed above, the petitioner has not established eligibility under the pertinent statute and regulations.

Conclusion

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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