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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

PUBLIC COPY

[redacted]

B9

DATE: MAY 15 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

PETITION: Petition for Special 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:

[redacted]

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,

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. 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 the battered child of a United States citizen.

The director denied the petition because at the time of filing the petitioner had reached 21 years of age and did not establish that the abuse was a central reason for the filing delay and thus, the record did not establish that the petitioner was eligible for immigrant classification. The director also determined that the petitioner had not established that she had resided with the claimed abusive United States Citizen (USC). On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief. The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, 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), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General 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) of the Act provides:

> (1) The term "child" means an unmarried person under twenty-one years of age . . .

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 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 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].

The regulation at 8 C.F.R. § 204.2(e) states, in pertinent part: *Self-petition by child of abusive citizen or lawful permanent resident—Eligibility.*

> (v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.
>
> (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

Facts and Procedural History

The petitioner is a native and citizen of Grenada who was [redacted] and who entered the United States on December 21, 1988 as a B-2 visitor. The petitioner's USC father filed a Form I-130, Petition for Alien Relative, on June 22, 2007[1] on the petitioner's behalf. Service records show that an approval notice of the Form I-130 was sent to the petitioner's father on August 27, 2008. The petitioner [redacted], and filed this Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on April 16, 2010. Due to the insufficiency of the evidence in the record, the director issued a Request for Evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director denied the petition because the petitioner had reached 21 years of age and had not established that the claimed abuse was a central reason for the filing delay and also because the petitioner had not established she had ever resided with her father.

On appeal, counsel for the petitioner asserts that the director referenced the reasons for denial of the petition as the petitioner's failure to establish a qualifying relationship with her USC father and her eligibility for immigration classification based on a qualifying relationship but in the body of the decision the director determined: the petitioner had not established a qualifying

[1] The petitioner notes that her father initially filed the Form I-130 in 1997 and a copy of the Form I-130 in the file shows a date stamp of May 24, 1997.

relationship and had not established she had resided with her USC father. Counsel asserts this error requires that the matter be remanded to the director for a consistent decision. Counsel also contends that the director failed to consider the petitioner's affidavit showing there was a connection between the abuse suffered and her failure to file the Form I-360 before her twenty-first birthday. Counsel further contends that a copy of a 1988 Internal Revenue Service (IRS) Form and a handwritten request for a change in beneficiary form is sufficient to demonstrate that the petitioner resided with her father.

Preliminarily, the director in the body of the decision set out the deficiencies of the evidence regarding the petitioner's claimed residence with her father as well as her failure to demonstrate a connection between the alleged abuse and her failure to file the Form I-360 before her twenty-first birthday. As such, the petitioner had knowledge of the deficiencies of the evidence submitted and the opportunity to provide additional evidence in support of the appeal. The director's typographical error in referring to the wrong number is harmless error.

Analysis

A full review of the record fails to establish that the petitioner's father subjected her to battery or extreme cruelty. In the petitioner's December 28, 2010 statement, she indicated that her contact with her father was sporadic and he did not treat her the same way as her siblings. She also noted that her father did not follow through with his promise to file an immigrant petition on her behalf. She indicated that in the fall of 2006 he agreed to file an immigrant petition again but that he delayed in filing the paperwork and told her he would file the paperwork his own way. In August 2008 he gave her a copy of the Form I-130 approval notice and called her names. The petitioner reported that when her father learned that she had filed a petition on her own behalf he was angry and called her mother's family names. She also indicated that her father was telling family members that she had delayed the processing of her green card and that she would not talk to him. The petitioner asserts that her father is holding her residency situation over her head.

The record also includes a March 17, 2010 evaluation prepared by [redacted] licensed mental health counselor. [redacted] noted that the petitioner was suffering a cluster of anxious-depressive symptoms and that the petitioner had been exposed to paternal abuse and neglect and problems related to the interaction with the legal system as an immigration petitioner.

Upon review of the record, the petitioner has not provided probative testimony establishing that she was subjected to battery or extreme cruelty as that term is defined in the statute, regulation, and pertinent case law. The petitioner's claims refer generally to her father treating her differently than her siblings, calling her and her mother's family's names, and becoming angry when she questioned him regarding her immigration status. The petitioner's assertion that her father is holding her residence status over her head is not supported in the record with specific incidents of threats or manipulation. The record does not include sufficient probative testimony or other evidence to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that her father's non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were part of an overall pattern of violence. While we do not question the expertise of the psychologist or his diagnosis of the

petitioner, the evaluation alone does not indicate that the behavior of the petitioner's father involved battery or extreme cruelty. [redacted] while indicating that the petitioner was exposed to paternal abuse and neglect, does not identify with specificity the particular events that resulted in his opinion. In this matter, the petitioner has not identified with probative detail the circumstances surrounding specific events to establish that she was the victim of battery or extreme cruelty as that term is set out in the statute, regulation, and pertinent case law.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. Accordingly, the petitioner has failed to establish that she was subjected to battery or extreme cruelty, as required under section 204(a)(1)(A)(iv) of the Act.

Similarly, the petitioner has not established that she resided with her father. She does not provide any information regarding her family situation in Grenada and she does not provide any probative evidence that she resided with her father once she entered the United States in 1988. Although the petitioner was only two years old at the time, she has not provided statements from her mother or other relatives or anyone to explain the circumstances of her residence after she entered the United States. Neither the 1988 IRS Form nor the handwritten change in beneficiary notice provide the requisite evidence establishing that the petitioner actually resided with her father. As the director noted, there is no evidence that the 1988 IRS Form was filed, and the 1997 change in beneficiary to an insurance policy does not establish that the petitioner resided with her father. There is insufficient evidence in the record to establish the petitioner resided with her father as is required by section 204(a)(1)(A)(iv) of the Act.

Upon review of the record in its entirety, we find that petitioner has not established that she resided with her father or was subjected to battery or extreme cruelty. As the petitioner has not established that she was subjected to battery or extreme cruelty, she cannot establish that the abuse was one central reason for her delay in filing the Form I-360. The petitioner, therefore, also has not shown that she meets the requirements of section 204(a)(1)(D)(v) of the Act and consequently she has not established that she had a qualifying relationship with a citizen of the United States pursuant to section 204(a)(1)(A)(iv) of the Act. She is thus ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Act and her petition will not be approved.

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. The petitioner has not sustained that burden.

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