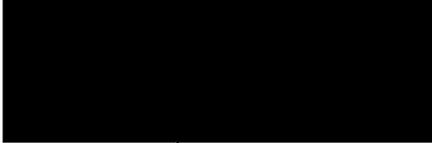


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Bq

DATE: OCT 12 2012 OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: 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:

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 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 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 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 service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 his United States citizen stepparent.

The director denied the petition for failure to demonstrate that the petitioner resided with his stepfather and that his stepfather subjected him to battery or extreme cruelty.

On appeal, the petitioner submits an affidavit and additional evidence.

Relevant Law and Regulations

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)(A)(iv) of the Act provides:

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 204(a)(1)(J) of the Act prescribes:

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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part:

(v) *Residence.* . . . 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 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 that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen... parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iv) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(e)(2), which states, in pertinent part:

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together... Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(e)(2)(i) further states:

Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

Pertinent Facts and Procedural History

The petitioner is a citizen of Canada who was born on July 7, 1994. The petitioner entered the United States as a visitor on July 4, 2008. In 2008, when he was 13 years old, his mother married

F-S-¹ a U.S. citizen. The petitioner filed the instant Form I-360 on April 25, 2011 when he was 16 years old. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residence with F-S- and his stepfather's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility and the petition was denied. The petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Residence

The record does not demonstrate that the petitioner resided with his abusive stepfather, F-S-. In the denial of the self-petition, the director correctly determined that the petitioner failed to submit sufficient evidence to show that he resided with F-S-. The petitioner stated on the Form I-360 that he last resided with F-S- in August of [REDACTED]. He submitted a copy of his mother's marriage certificate showing that she and F-S- both lived at the [REDACTED] address at the time of their marriage in April of 2008. The relevant record also contains the petitioner's affidavits and letter dated January 5, 2012 and a letter from the property manager dated December 23, 2011. The petitioner's affidavits are vague and do not contain probative details of his shared residence with F-S- apart from the claimed abuse. The petitioner's letter dated January 5, 2012 and the property manager's letter dated December 23, 2011 both reference a fire that occurred at the petitioner's residence on December 23, 2011. The petitioner's letter does not add detail regarding his shared residence with F-S- and the property manager's letter states that the petitioner's mother resides there with her children but does not indicate that F-S- lives there or lived there in the past.

Upon appeal, the petitioner submits a letter from his high school stating that the petitioner resided with his mother at [REDACTED] and that his previous address was on [REDACTED] where the petitioner lived from September 12, 2000 to January 15, 2012. The school letter does not indicate that F-S- lived at either address during those years. The evidence on record does not establish that the petitioner and F-S- both resided at [REDACTED] at the same time. Accordingly, the record does not establish by a preponderance of the evidence that the petitioner resided with his stepfather, as required by section 204(a)(1)(A)(iv) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that F-S- did not subject the petitioner to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. The relative evidence in the record contains the petitioner's affidavits and a brief prepared by the petitioner's former counsel. The former counsel's brief contains numerous discrepancies including referring to the abuser as the petitioner's spouse and asserting that the petitioner entered into his marriage in good faith. Accordingly no consideration was given to the arguments contained in the brief.

¹ Name withheld to protect individual's identity.

In his first affidavit, the petitioner briefly stated that F-S- changed to a “complete different person.” He stated that F-S- was arrogant and disrespectful to the petitioner’s mother. In his second affidavit submitted in response to the RFE, the petitioner repeated his earlier statements and added that F-S- tried to convince him that his mother “was a bad mother” and yelled at them when they did not “conform to [F-S-’s] expectations.” The director correctly concluded that the affidavits lacked probative details regarding specific incidents of abuse. On appeal, the petitioner submits a third affidavit where he repeats much of his previous statements. The petitioner adds that F-S- disrespected him in front of the petitioner’s friends and that sometimes the petitioner would go home late to avoid dealing with F-S-. When viewed in the aggregate, the record does not demonstrate that the petitioner’s stepfather ever battered him or that his behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(e)(1)(vi). Accordingly, the petitioner has not established that his stepfather subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iv) of the Act.

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; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.