

(b)(6)



U.S. Citizenship
and Immigration
Services

[REDACTED]

Date: **APR 29 2013** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Child Pursuant to Section 204(a)(1)(A)(iv), (B)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv),(B)(iii)

ON BEHALF OF PETITIONER:

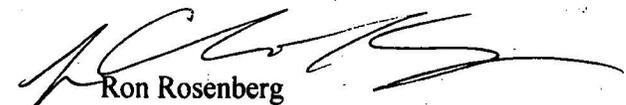
SELF-REPRESENTED

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center, (“the 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 parent.

The director denied the petition for failure to establish the requisite abuse, a qualifying relationship, eligibility for immediate relative classification based on that qualifying relationship, eligibility for the late-filing provision for former children under 25, residency with his abuser, and his own good moral character.

On appeal, the petitioner submits a brief statement.

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 (A) a child born in wedlock.”

Section 204(a)(1)(B)(iii) of the Act provides:

An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification as under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien’s permanent resident alien 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] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien’s permanent resident parent.

In 2005, Congress amended the self-petitioning provisions for abused children to extend eligibility to individuals who failed to file before turning 21 due to the abuse. Section 204(a)(1)(D)(v) of the Act states:

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. . . .

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

(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 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 that 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.

(vii) *Good moral character*. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iv) or (B)(iii) of the Act are explained further at 8 C.F.R. § 204.2(e)(2), which states, in pertinent part, the following:

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

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

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 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 Georgia who was born in that country on [REDACTED]. On February 13, 2004, the petitioner entered the United States as the child (K-2) of a fiancé of a U.S. citizen, (K-1). According to the petitioner, his father, K-P-, married M-S-, his fiancé, but the marriage did not last.¹ The petitioner's father moved out leaving the petitioner behind with M-S- who then had the marriage annulled. The petitioner's father became a lawful permanent resident of the United States in December of 2007 and naturalized in July of 2009. The petitioner filed the instant Form I-360 on July 29, 2010 when he was 22. The director subsequently issued a Request for Evidence (RFE) of the petitioner's qualifying relationship with an abusive U.S. citizen parent and the requisite battery or extreme cruelty, joint residence, and good moral character. The petitioner timely responded with additional evidence which the director found insufficient to demonstrate the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not established eligibility as the abused child of a United States citizen and the appeal will be dismissed for the following reasons.

Joint Residence

In the denial of the self-petition, the director determined that the petitioner failed to show that he resided with K-P- but did not state a basis for this determination. The relative evidence in the record contains: affidavits from the petitioner, a letter from family friend [REDACTED] a school transfer waiver form, and a letter from [REDACTED]. In his affidavits, the petitioner stated that he resided with his father and stepmother in Aurora, Colorado from February of 2004 until June of 2004 when his father abandoned him. This assertion is supported by the letter from [REDACTED] who also resided at the same address along with M-S-, the petitioner, and K-P-. The letter from [REDACTED] and the school transfer waiver form provide further evidence that the petitioner resided with his father in the United States after their arrival. However, the petitioner also stated in his affidavits that he did not see his father again until April of 2008 when K-P- traveled to New York to visit the petitioner for the weekend.

Section 204(a)(1)(A)(iv), (B)(iii) of the Act require a child's residence with the parent when the parent is a lawful permanent resident or citizen of the United States. The petitioner has shown that he jointly resided with K-P- but this joint residence occurred prior to K-P-'s adjustment to lawful permanent resident status in December of 2007 and subsequent naturalization in July of 2009. The sole visit by K-P- in April of 2008 does not constitute shared residence because section 101(a)(33) of the Act defines the term "residence" as a person's "principal, actual dwelling place in fact, without regard to intent." Without evidence that the petitioner resided with K-P- after December of 2007 and prior to his twenty-first birthday on April 25, 2009, the record does not establish the requisite joint residence.

¹ Names withheld to protect the individuals' identities.

Consequently the petitioner has failed to establish that he resided with a citizen or permanent resident alien parent as required by section 204(a)(1)(A)(iv), (B)(iii) of the Act.

Battery or Extreme Cruelty

The director incorrectly determined that the petitioner failed to establish that he was subjected to battery or extreme cruelty by his lawful permanent resident or citizen father. The record contains the petitioner's affidavits, a letter from [REDACTED] and a psychological evaluation prepared by clinical psychologist, [REDACTED]. In his first affidavit, the petitioner credibly described numerous incidents of K-P-'s extreme cruelty towards him including constant verbal abuse, neglect, and abandonment at age 16 without any means of support. The petitioner stated that after K-P- abandoned him, his former stepmother, M-S-, sent him to New York because she could not care for him anymore. Once there, the petitioner was forced to work long hours as a restaurant busboy for very little pay. He stated that after years of no contact with his father, K-P- called and told the petitioner that he had returned to Georgia for 18 months, re-entered the United States on another fiancé visa, married the woman he had abandoned the petitioner for, and was in the process of obtaining his United States lawful permanent resident status.

In his second affidavit submitted in response to the RFE, the petitioner credibly provided additional, probative information regarding his relationship with K-P- and his father's extreme cruelty after they came to the United States. He stated that his father had problems with his new wife and blamed the petitioner. He credibly described being forced to stay in the basement without proper nourishment and being afraid of his father's temper. The petitioner stated that his father told him that he was leaving M-S- for another woman but that the petitioner was not welcome because she did not need an "unnecessary responsibility." The petitioner further stated that although the daily terror ended when K-P- left, he felt broken and sad. After four years of no contact, K-P- reappeared in the petitioner's life in 2008 and instructed him not to take any action to apply for an immigration benefit. The petitioner recounted that K-P-, who had become a lawful permanent resident by this point, promised to help the petitioner obtain legal status in the United States. The petitioner credibly described having a little hope that after four years, his father had changed and was trying to make up for the past abuse and help him. After nearly two years of promising to help, K-P- then told the petitioner nothing could be done and later told the petitioner to not worry and just "have fun." The petitioner credibly explained how his father's response sounded like mockery and renewed the cycle of his father's manipulation and abandonment.

In his letter, [REDACTED] attested to sharing a residence with the petitioner and K-P- when they entered in 2004. He stated that he witnessed K-P- constantly humiliate and insult the petitioner and observed that the petitioner was terrified of K-P-. [REDACTED] also recounted that K-P- withheld food from the petitioner who was forced at times to eat dog food. [REDACTED] stated that after K-P- abandoned his son, K-P- called the petitioner only once and was verbally abusive during the telephone conversation. In the psychological evaluation, [REDACTED] diagnosed the petitioner with Post-Traumatic Stress Disorder as a result of being completely abandoned by his father in a foreign country as a child.

On appeal, the petitioner submits another statement providing additional details about the continuing depression he suffers as a result of K-P-'s abuse. The petitioner credibly states that due to his father's abandonment and neglect, he was left without money or the means to return to Georgia. He was forced to drop out of school, suffered through a period of severe depression, and was left with a feeling of hopelessness that he still feels to this day. The manipulative treatment of the petitioner by K-P- after K-P-'s adjustment of status was part of the overall pattern of violence that started after their arrival to the United States. Accordingly, a preponderance of the evidence demonstrates that the petitioner's father subjected him to extreme cruelty as required by section 204(a)(1)(A)(iv), (B)(iii) of the Act and the director's contrary decision is hereby withdrawn.

Good Moral Character

In the denial of the self-petition, the director further determined that the petitioner did not provide evidence that he is a person of good moral character. The director did not state a basis for this determination. In response to the RFE, the petitioner submitted an affidavit credibly explaining that he was unable to obtain a police clearance report because he did not have the necessary forms of personal identification to request a police record search. Instead, the petitioner submitted a National Background Check conducted by a private internet-based company and multiple letters of support from friends and colleagues who all credibly attested to his good moral character. The preponderance of the evidence establishes that the petitioner is a person of good moral character as required by section 204(a)(1)(A)(iv) of the Act. The director's contrary determination is hereby withdrawn.

Qualifying Relationship, Eligibility for Immigrant Classification and Filing Delay

Between December 2007 when his father became a lawful permanent resident and the petitioner's twenty-first birthday on April 25, 2009, the petitioner had a qualifying relationship with his father and was eligible for preference immigrant classification based on their relationship. However, the petitioner did not establish the requisite shared residence with his father after his father obtained lawful permanent resident status. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iv) or (B)(iii) of the Act because he did not meet all the requirements prior to his twenty-first birthday. Because the petitioner did not qualify to file a petition under the child self-petitioning provisions before he turned 21, he is consequently ineligible for the late-filing provision at section 204(a)(1)(D)(v) of the Act regardless of whether or not his father's abuse was a central reason for his delayed filing.

Conclusion

Although the petitioner has established his good moral character and the requisite abuse on appeal, the petitioner has failed to show that he resided with the petitioner after K-P- became a lawful permanent resident of the United States and that he qualified to file the instant petition on the day

before he turned 21. He consequently is ineligible for immigrant classification as the abused child of a U.S. permanent resident or citizen under section 204(a)(1)(A)(iv), (B)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his 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 (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.