

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: JUN 19 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) 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (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 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. The director also denied the petition for failure to establish a qualifying relationship with a United States citizen stepparent, and eligibility for immediate relative classification based on that qualifying relationship, because the petitioner did not show evidence of termination of his mother’s prior marriage(s).

On appeal, the petitioner submits a declaration 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 Grenada who was born on August 28, 1993. The petitioner entered the United States as a visitor on July 4, 2007. In 2010, when he was 17 years old, his mother married R-M-¹, a U.S. citizen. The petitioner filed the instant Form I-360 on April 29, 2011 when he was 17 years old. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residence with R-M- 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 director correctly determined that the petitioner failed to establish that he resided with R-M-. The petitioner stated on the Form I-360 that he resided with R-M- from December of 2010 to January of 2011 at their [REDACTED] New York address. He submitted two self-declarations, a copy of a lease dated August 30, 2010, and a copy of his student checking account statement for July and August of 2012. The lease lists the petitioner's mother and R-M- as tenants for a term beginning September 1, 2010 and ending August 31, 2011, but does not list the petitioner as a resident and therefore is insufficient to establish that the petitioner resided with R-M- after the petitioner's mother and R-M- were married. The student checking account statement is dated a year-and-a-half after the claimed residence ended and is not indicative of a shared residence with R-M-. The letters from the petitioner do not contain any probative information about his shared residence with R-M- apart from the claimed abuse.

Upon appeal, the petitioner submits another self-declaration, a letter from his mother, and a high school transcript dated March 25, 2010 showing the same address listed on the lease submitted below. In his letter, the petitioner does not describe their home or residential routines, or provide other, substantive information to establish that he resided with R-M-. Likewise the letter from [REDACTED] also fails to provide probative information that the petitioner and R-M- resided at the [REDACTED] address at the same time. Instead she states that R-M- did not live with her prior to their marriage on December 10, 2010. This assertion contradicts the information listed on the lease agreement, further giving the lease little evidentiary weight. The petitioner's school transcript is dated prior to the period of claimed joint residence. 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.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

We further find no error in the director's determination that R-M- 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 consists of the petitioner's letters. In his first letter, the petitioner stated that after his mother married R-M-, she was always sad and arguing with R-M-. He stated that R-M- began trying to control him by demanding to know the petitioner's location at all times and imposing a rule to be in bed by 8:30 P.M. In his second letter submitted in response to the RFE, he repeated his earlier statements and added that he often noticed that his mother cried because of the fighting. He stated that his mother and R-M- would argue on their cellular telephones even though both were in the apartment. He further stated that he overheard R-M- use threatening language and was glad when R-M- left. The petitioner did not, in either of his letters, provide probative information about or cite to any specific examples or incidents of abuse directed at him.

On appeal, the petitioner submits a third letter and a letter from his mother, [REDACTED]. The petitioner again describes how R-M- became angry and controlling after marrying the petitioner's mother but he does not provide additional information about any abusive behavior directed towards him. Ms. [REDACTED] states that R-M- called her names, was jealous, controlling, and physically abusive to her. She describes one incident when he slapped her, told her that he would have her deported if she called the police, and made life difficult for her and her children. However, Ms. [REDACTED] does not provide probative information about the claimed physical attack or about any other specific incidents of abuse. Further, she does not otherwise describe R-M-'s treatment of the petitioner and 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director correctly determined that the petitioner failed establish that he was eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act because he failed to establish that his mother was legally able to marry R-M-. Initially, the petitioner submitted a copy of his mother and R-M-'s marriage certificate and evidence of R-M-'s United States citizenship. The director requested evidence of the terminations of his mother's prior marriage(s) but the petitioner did not respond with additional evidence. On appeal, the petitioner submits a divorce decree for his mother and father showing that their marriage was dissolved on September 5, 1997. Accordingly, the record establishes by a preponderance of the evidence that the petitioner was eligible for immediate relative classification based on his relationship with R-M- as required by section 204(a)(1)(A)(iv) of the Act. This portion of the director's contrary determination is hereby withdrawn.

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. The petitioner has established that he had a qualifying relationship with R-M- but has failed to establish joint residence with R-M- and the requisite battery or extreme cruelty. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.