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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

Date: **NOV 26 2013** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg

for
Ron Rosenberg
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 sustained.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien child battered or subjected to extreme cruelty by her father, a lawful permanent resident of the United States. The director denied the petition for failure to establish a qualifying parent-child relationship and corresponding eligibility for preference immigrant classification because the petitioner did not show that her father’s abuse was one central reason for her failure to file her petition before her twenty-first birthday.

On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), states, in pertinent part: “The term ‘child’ means an unmarried person under twenty-one years of age who is . . . 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.

Section 204(a)(1)(D)(v) of the Act further 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. . . .

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 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 Mexico who was born on November 26, 1983. The petitioner's father, R-F¹, is a U.S. lawful permanent resident who married her mother on October 29, 1971 in Mexico. The petitioner entered the United States when she was about four years old and resided with her parents and siblings in California. The petitioner filed the instant Form I-360 on July 18, 2007 when she was 23 years old. The director subsequently issued a Request for Evidence (RFE) that, among other things, the petitioner's father's abuse was one central reason for her failure to file her self-petition prior to her twenty-first birthday. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility and the petition was denied. The petitioner, through counsel, then filed this appeal. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's grounds for denial and the appeal will be sustained for the following reasons.

Analysis

In her declarations submitted below, the petitioner credibly described her father's battery and extreme cruelty inflicted upon herself, her mother and her siblings throughout her childhood and young adulthood. A police report, court documents and declarations of the petitioner's mother and five of her siblings further attest to her father's physical violence, such as hitting the petitioner and her siblings with his fists and a belt and attacking her mother with a knife. The petitioner and her family also credibly recounted her father's cycle of verbal and psychological abuse, which included telling the petitioner that the only way she could legalize her immigration status was through his help as her sponsor and his escalating violence every time the petitioner inquired about her immigration case. The petitioner and her mother recounted that in 2005, her father abandoned the family and moved to another state, but he continued to call the family and threaten them.

The director determined that the petitioner did not establish that her father's abuse was a central reason for her failure to file her self-petition before her twenty-first birthday because she stated that it was not until 2007, when she was 22 years old and accompanied her mother to a non-profit legal

¹ Name withheld to protect the individual's identity.

services provider, that she learned she might be eligible to self-petition for permanent residence based on her father's abuse. The director concluded that the petitioner's unawareness of the immigration law was "the primary reason for [her] delay in filing." *De novo* review of the record establishes that the petitioner's unawareness and inability to obtain legal assistance was only one reason for her filing delay, which was also attributable, in significant part, to her father's abuse.

To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a petitioner need not show that the abuse was the only cause for the delay. Rather, to show that a parent's abuse was "at least one central reason for the filing delay," the petitioner must demonstrate, by a preponderance of the relevant, credible evidence, a nexus between the abuse and the filing delay that is more than incidental or tangential. In this case, the record shows that during the years immediately preceding and following the petitioner's twenty-first birthday, her father's cycle of violence continued despite the fact that two of her siblings were diagnosed with serious medical conditions, underwent operations, hospitalizations and required ongoing medical care. Because the family lacked health insurance and her father ceased providing any financial support, the petitioner withdrew from college to work full time to assist the family. The record indicates that during her early adulthood, the petitioner was preoccupied with her family's basic survival and was unable to resolve her immigration status given her credible belief that her abusive father controlled her access to lawful permanent residency.² Although the physical abuse ended upon her father's desertion of the family in 2005, he continued to call the family and threaten them with deportation on numerous occasions throughout 2006 and 2007, when this petition was filed. When viewed in the aggregate, the preponderance of the relevant, credible evidence demonstrates that her father's abuse was at least one central reason for the petitioner's filing delay.

As of the day before her twenty-first birthday, the petitioner met all the requirements for immigrant classification under section 204(a)(1)(B)(iii) of the Act as a child abused by her father, a U.S. lawful permanent resident. This petition was filed before the petitioner's twenty-fifth birthday and she has shown that her father's abuse was at least one central reason for her filing delay. Accordingly, the petitioner remains eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act pursuant to the late-filing provision of section 204(a)(1)(D)(v) of the Act.

Conclusion

In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has met her burden. The appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.

² U.S. Citizenship and Immigration Services records show that the petitioner's father filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on November 12, 1996, with a priority date of November 1, 1991 (receipt number [REDACTED]).