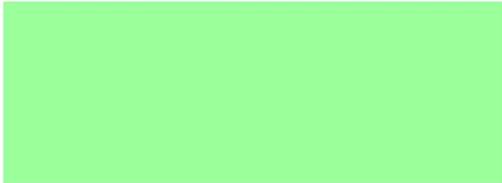




U.S. Citizenship  
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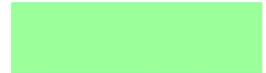
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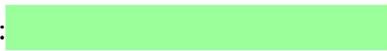
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Office: VERMONT SERVICE CENTER

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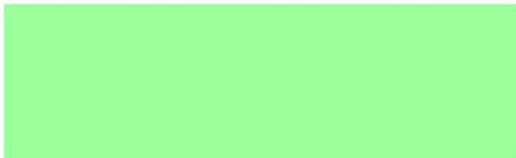


IN RE: Self-Petitioner:



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:



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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center acting 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)(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 a lawful permanent resident of the United States.

The director denied the petition for failure to establish a qualifying relationship and eligibility for immigrant classification based on this qualifying relationship. The director also determined that the petitioner failed to establish residence with her lawful permanent resident stepparent and the requisite abuse. 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), 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)(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)(J) of the Act further states, in pertinent part:

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:

(i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she: (A) Is the child of a citizen or lawful permanent resident of the United States; (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. . . .

(ii) *Parent-child relationship to the abuser.* The self-petitioning child must be unmarried, . . . and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act . . . . Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

\* \* \*

(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)(B)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(e)(2), which states, in pertinent part:

(i) *General.* 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.

(ii) *Relationship.* A self-petition filed by a child must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of the relationship evidence between . . . (E) A self-petitioning stepchild and an abusive stepparent is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parent and the stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any . . . .

(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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Venezuela who was born on April [REDACTED]. The petitioner entered the United States as a nonimmigrant visitor on November 29, 2003. On February [REDACTED] when the petitioner was 11 years old, her mother married V-L-<sup>1</sup> a national of Cuba and lawful permanent resident of the United States. The petitioner's mother and V-L- were divorced on December [REDACTED] when the petitioner was 16, and V-L- subsequently died on August [REDACTED]. The petitioner filed the instant Form I-360 on July [REDACTED], when she was 18 years old. The director denied the petition and the petitioner, through counsel, timely appealed.

We review these proceedings *de novo*. Counsel's claims on appeal have not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

#### *Qualifying Relationship and Corresponding Eligibility for Immigrant Classification*

In her decision, the director erroneously concluded the petitioner was not eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act as the abused child of a U.S. lawful permanent resident because the divorce between the petitioner's mother and V-L- automatically ended the petitioner's relationship with him. For immigration purposes, a stepparent-stepchild relationship is not necessarily terminated by the divorce of a child's parent and stepparent. *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981). Instead, the appropriate inquiry is whether a family relationship has continued to exist as a matter of fact between the stepparent and stepchild. *Id.* at 615. Consequently, self-petitioning children may still establish a qualifying relationship and meet the definition of a stepchild at section 101(b)(1)(B) of the Act if they demonstrate that they continued to have a relationship with their former stepparents as a matter of fact. To the extent that the director determined that the divorce between petitioner's natural parent and V-L- rendered her automatically ineligible to establish a qualifying parent-child relationship with her former stepfather and immigrant classification based on such a relationship, that portion of the decision is withdrawn.

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<sup>1</sup> Name withheld to protect individual's identity.

Nonetheless, V-L- predeceased the petitioner's filing of her Form I-360 self-petition by approximately one year and therefore the petitioner cannot establish a family relationship between her and V-L- existed as a matter of fact. Further, section 204(a)(1)(B)(iii) of the Act states that in order to establish eligibility under this provision, a self-petitioner must be "[a]n 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." See 8 U.S.C. § 1154(a)(1)(B)(iii). Although the record indicates that the petitioner's stepfather's death and resultant loss of immigrant status occurred less than two years before her self-petition was filed, the petitioner did not establish that it was due to an incident of domestic violence.

On appeal, counsel argues that the director failed to take into consideration sections 811 and 823 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) in denying the petitioner's self-petition. Counsel asserts that section 811 of VAWA 2005 extends the definition of "VAWA self-petitioner" to include "VAWA Cuban adjustment" cases. See Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, (VAWA 2005). Counsel further asserts that section 823 of VAWA 2005 allows for abused spouses of lawful permanent residents who adjusted under the Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act (CAA)) to qualify for VAWA relief. *Id.* Counsel adds that section 811 created a uniform definition of "VAWA petitioner" which encompasses the children of such abused spouses.

Section 811 created a uniform definition for the term "VAWA self-petitioner" which includes aliens who qualify for relief under the CAA "as a child or spouse who has been battered or subjected to extreme cruelty." Section 823 of VAWA 2005 amended the relief sought under the CAA to include the following:

The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(J). An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies . . . or for 2 years after the date of termination of the marriage . . . if there is demonstrated a connection between the termination of a marriage and the battering or extreme cruelty by the Cuban alien.

*Id.*

While the petitioner has not established that she had a qualifying relationship with a lawful permanent resident and her corresponding eligibility for immigrant classification based upon that relationship as required by section 204(a)(1)(B)(iii) of the Act, she was not precluded from filing for adjustment of status of status under the CAA. However, as an application for adjustment of

status to that of a lawful permanent resident as the child of a Cuban national under section one of the CAA is not currently before us, the petitioner's appeal will be dismissed.

*Residence*

The director further determined, without discussion, that the petitioner did not establish that she resided with her abusive stepfather during his marriage to her mother. The petitioner stated on the Form I-360 self-petition that she last resided with V-L- in April of 2010 at [REDACTED], Florida. She submitted a personal statement and a statement from her mother, [REDACTED]. In her statement, the petitioner described living at several efficiency apartments with her mother and V-L-. She recounted that during the times when V-L- argued with her mother and kicked them out, she resided with her aunt. The petitioner's statement did not contain any probative details of her shared residence with V-L- apart from the claimed abuse. The petitioner's mother, [REDACTED] in her statement, mainly discussed the claimed abuse and did not add any substantive information regarding the petitioner's shared residence with V-L-.

On appeal, counsel does not assert that the petitioner resided with V-L- nor did she submit additional evidence to establish that the petitioner and V-L- resided together during his marriage to the petitioner's mother. Accordingly, the record does not establish by a preponderance of the evidence that the petitioner resided with her stepfather, as required by section 204(a)(1)(B)(iii) of the Act.

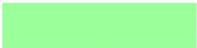
*Battery or Extreme Cruelty*

The director also determined, without discussion, that the petitioner failed to establish that V-L- subjected her to battery or extreme cruelty during his marriage to her mother. The relative evidence in the record consists of a statement from the petitioner, a statement from her mother [REDACTED], and a letter from [REDACTED] a mental health counselor. In her statement, the petitioner described witnessing V-L- be abusive towards her mother but did not provide probative details regarding any specific incidents of abuse directed at her. In her statement, the petitioner's mother likewise did not assert that V-L- was abusive towards the petitioner. The brief letter from [REDACTED] the petitioner's mental health counselor, described the petitioner as a secondary victim of domestic violence. While we do not question Ms. [REDACTED] professional expertise, she did not provide any substantive information to demonstrate that V-L- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(e)(1)(vi). On appeal, counsel does not address the director's determination regarding the requisite abuse. Accordingly, the petitioner has not established that her stepfather subjected her to battery or extreme cruelty, as required by section 204(a)(1)(B)(iii) of the Act.

*Conclusion*

The petitioner did not establish that she had a qualifying relationship with her former stepfather and was eligible for immigrant classification based on such a relationship. In addition, the petitioner did not establish that she resided with or was subjected to battery or extreme cruelty by her former stepfather. Consequently, the petitioner is ineligible for immigrant classification as the abused child of a lawful permanent resident of the United States pursuant to 204(a)(1)(B)(iii) of the Act.

(b)(6)



*NON-PRECEDENT DECISION*

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In these proceedings, the petitioner bears the burden to establish her eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the self-petition will remain denied.

**ORDER:** The appeal is dismissed.