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



U.S. Citizenship
and Immigration
Services

Date: **JAN 10 2014** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: [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:

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (the director) denied the immigrant 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by her United States citizen stepparent.

The director denied the petition based on his determination that the petitioner had not established: (1) a qualifying relationship as a child of a United States citizen; (2) eligibility for immigrant classification based on the qualifying relationship; and (3) joint residence with a United States citizen parent.

On appeal, counsel submits a brief and additional evidence.

Applicable Law and Regulations

Section 204(a)(1)(A)(iv) of the Act provides that 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) of the Act and who resides, or has resided in the past, with the citizen 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 of Homeland Security] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

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 eighteen years at the time the marriage creating the status of stepchild occurred.

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, in pertinent, the following:

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) . . . 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 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 eligibility requirements are explained 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.

The evidentiary standard and guidelines 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of China, was born on March 25, 1988. The petitioner's mother married her United States citizen fiancé, L-K-, in Washington State on December 4, 2007, when the petitioner was 19 years old. The petitioner was admitted to the United States on September 20, 2008 as a K-2 derivative child following to join her mother who held K-1 fiancée status. The petitioner subsequently filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on October 14, 2008.

On August 17, 2009, the marriage between the petitioner's mother and L-K- terminated in divorce. The petitioner's Form I-485 was thereafter denied. On November 2, 2009, the petitioner's mother filed a Form I-360, when the petitioner was 21 years old. The petitioner's mother's Form I-360 was approved on May 10, 2010. The petitioner filed the instant Form I-360 on August 4, 2011. On December 19, 2012, the director denied the petition for failure to establish a qualifying relationship as a child of a United States citizen, eligibility for immigrant classification based upon the qualifying relationship, and joint residence with a United States citizen parent. Counsel 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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship

The director determined that the petitioner failed to establish that she had a qualifying relationship with L-K- because she does not meet the statutory definition of "child" under section 101(b)(1) of the Act. Section 101(b)(1) of the Act includes within the definition of "child," a stepchild, *provided* the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred. Section 101(b)(1)(B) of the Act; 8 U.S.C. § 1101(b)(1)(B). Since the petitioner was 19 years old when the stepparent/stepchild relationship was created between her and L-K-, she did not qualify as his "child" under section 101(b)(1) of the Act.¹

On appeal, counsel asserts that the petitioner falls within the parameters of section 204(a)(1)(D)(v) of the Act, which extends eligibility to individuals who failed to file a Form I-360 before turning 21 when the parent's abuse is at least one central reason for the filing delay. However, section 204(a)(1)(D)(v) of the Act states that it only applies to individuals who qualified to file a petition under section 204(a)(1)(A)(iv) of the Act. Section 204(a)(1)(A)(iv) of the Act provides that it applies only to "the child of a citizen of the United States." Here, the petitioner never qualified as L-K-'s "child" as defined under section 101(b)(1) of the Act. Because the petitioner was not qualified to file a petition under section 204(a)(1)(A)(iv) of the Act, the exception at 204(a)(1)(D)(v) of the Act does not apply.

On appeal, counsel asserts that pursuant to the holding in *Carpio v. Holder*, 592 F.3d 1091 (10th Cir. 2010), United States Citizenship and Immigration Services (USCIS) must inquire as to the child's age when he or she seeks to enter the United States on K-2 status instead of when the stepchild/stepparent relationship was established. Counsel contends that to inquire about the petitioner's age at the time of her mother's marriage to L-K- violates basic principles of common sense and fairness. However, the Tenth Circuit Court of Appeal's holding in *Carpio v. Holder* is

¹ The director noted that the petitioner's mother's marriage to L-K- was terminated before the petitioner filed her Form I-360. Pursuant to section 204(a)(1)(A)(iv) of the Act, the dissolution of a marriage that created a stepparent/stepchild relationship prior to filing the Form I-360 terminates the qualifying relationship. To remain eligible for immigrant classification as a child defined under section 101(b)(1)(B) of the Act despite the legal termination of the child's parent's and stepparent's marriage, a petitioner must establish that a family relationship has continued to exist as a matter of fact between the stepparent and stepchild. *Matter of Mowrer*, 17 I& N Dec. 613 (BIA 1981). However, in this case, an inquiry into the petitioner's continuing relationship with L-K- is moot because she has not established that she met the definition of "child" at section 101(b)(1) of the Act when the stepparent/stepchild relationship was created.

limited to individuals who entered the United States with K-2 visas and seek adjustment of status under section 245(d) of the Act, 8 U.S.C. § 1255(d). *See Matter of Hieu Trung Le*, 25 I. & N. Dec. 541 (BIA 2011)(Concluding that to adjust status based on a K-2 visa, an alien derivative child must establish that he or she was under 21 years of age at the time of admission to the United States.). This case, which arises under the jurisdiction of the Ninth Circuit Court of Appeals, does not involve an application for adjustment of status under section 245(d) of the Act, but a petition for an immigrant visa as an abused child under section 204(a)(1)(A)(iv) of the Act, which requires that the petitioner be a “child of a citizen of the United States.” The director correctly determined that the petitioner failed to establish a qualifying relationship with L-K- because the stepchild/stepparent relationship was created after the petitioner turned 18 years old.

Eligibility for Immigrant Classification

Because the petitioner failed to establish that she had a qualifying relationship with L-K-, she also failed to establish her eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on such a relationship. The director correctly denied the petition on this additional ground.

Joint Residence

The director noted, but did not further discuss, the basis of his determination that the petitioner did not establish her joint residence with L-K-. The petitioner submitted below a psychological evaluation, dated June 13, 2011, from [REDACTED] Ph.D. Dr. [REDACTED] stated that during the evaluation the petitioner recounted that after she entered the United States she resided in a house separate from her mother and L-K-. On appeal, the petitioner submits an affidavit from [REDACTED] who stated that he rented a room to the petitioner’s mother and L-K- in Seattle from May 2008 until March 2009. He explained that the petitioner could not reside with her mother and L-K- because the house was fully occupied at the time. He recounted that he instead rented a room to the petitioner at a different location in Seattle, near her mother and L-K-’s home. Mr. [REDACTED] stated that the petitioner “conducted most of her daily activities over her mother and stepfather’s residence.”

On appeal, counsel asserts that since the petitioner “did everything” at her mother and L-K-’s home, she resided with L-K- “even though she also had her own place.” The Act defines residence as a person’s general abode, which means the person’s “principal, actual dwelling place in fact, without regard to intent.” Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The record shows that the petitioner rented and resided in a house that was separate from her mother and L-K-’s residence. Consequently, even if the petitioner established a qualifying relationship with L-K- and eligibility for immigrant classification based upon that relationship, her petition would still be denied because she failed to establish that they resided together.

Conclusion

As set forth in the previous discussion, the petitioner has failed to establish: (1) a qualifying relationship as a child of a United States citizen; (2) eligibility for immigrant classification based on the qualifying relationship; and (3) joint residence with a United States citizen parent. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.