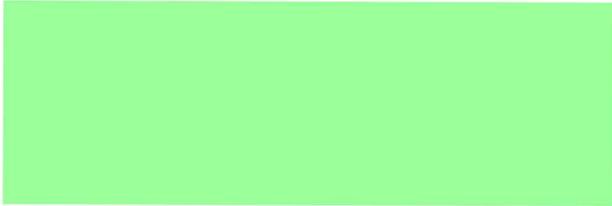


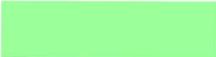


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JUL 29 2014** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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:

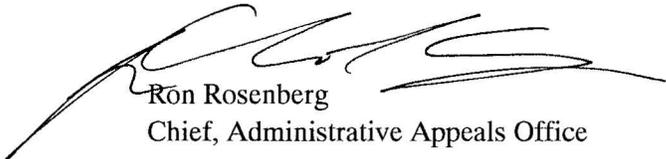


INSTRUCTIONS:

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,

  
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 pursuant to 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 his U.S. citizen parent. The director denied the petition for failure to demonstrate a qualifying relationship with an abusive U.S. citizen stepparent and corresponding immediate relative classification as a child of a U.S. citizen because the petitioner was over 18 years old when his mother married his stepfather.

*Relevant Law and Regulations*

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) of this title, 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. . . .

The regulation at 8 C.F.R. § 204.2(e)(1)(ii) provides that “[t]he self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser’s child under the definition of child contained in section 101(b)(1) of the Act . . .”

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 twenty-one 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.

Section 204(a)(1)(J) of the Act 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].

For stepchildren, 8 C.F.R. § 204.2(e)(2)(ii)(E) states that primary evidence of the relationship between:

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 . . .

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Mexico who was born on August 29, 1987. The petitioner states that he entered the United States without inspection when he was two years old. On April 19, 2008, his mother married T-B-<sup>1</sup>, a citizen of the United States. The petitioner filed the instant Form I-360 self-petition on September 27, 2011 when he was 24 years old.

#### *Analysis*

In this case, the petitioner has not demonstrated that he had a qualifying relationship with his U.S. citizen stepparent. The petitioner's mother and stepfather married on April 19, 2008, when the petitioner was twenty years old. Because he was over 18 years old at the time of their marriage, he does not meet the definition of a stepchild under section 101(b)(1)(B) of the Act, and consequently does not qualify as his stepfather's child or immediate relative under sections 201(b)(2)(A)(i) and 204(a)(1)(A)(iv) of the Act.

In the appeal notice, counsel asserts that when the petitioner filed his Form I-360 self-petition, his mother was a lawful permanent resident of the United States. Counsel submits a copy of the petitioner's birth certification and his mother's alien registration card showing that she became a lawful permanent resident on May 17, 2010. The fact that the petitioner's mother was a lawful permanent resident when he filed his self-petition does not alter the eligibility requirements for self-petitioning abused children under section 204(a)(1)(A)(iv) of the Act.

#### *Conclusion*

At the time he filed this self-petition, the petitioner did not meet the definition of a child at section 101(b)(1)(B) of the Act because his mother had married his U.S. citizen stepfather when he was twenty years old. Consequently, the petitioner did not have a qualifying parent-child relationship with his stepfather and was also ineligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iv) 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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