



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **NOV 03 2014**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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:

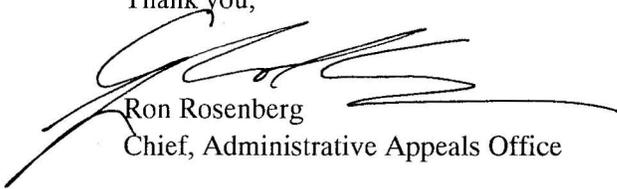
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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)(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 her United States citizen stepparent. The director denied the petition finding that the petitioner did not demonstrate a qualifying relationship to her U.S. citizen stepmother. The director also noted that the petitioner did not provide sufficient evidence to establish her good moral character, that her stepmother subjected her to battery or extreme cruelty, and that her stepmother's abuse was a central reason for her filing delay.

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)(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 evidentiary requirements 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:

(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

Pertinent Facts and Procedural History

The petitioner, a citizen of Cameroon, was born on February 28, 1990 and entered the United States as a K2 nonimmigrant on September 13, 2010. On December 4, 2010, her father married F-N¹, a U.S. citizen. The record reflects that the petitioner resided with F-N-, her father, and her two younger sisters at F-N-'s home until February 9, 2011. The petitioner's father's marriage to F-N- was annulled on June 14, 2013. The petitioner filed the instant Form I-360 self-petition on October 7, 2013. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character. Three weeks later, before the petitioner responded, the director denied the petition primarily on the ground that the petitioner failed to establish a qualifying relationship as her father's marriage to F-N- terminated prior to the filing of the petitioner's self-petition.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, including the documents provided on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director erroneously stated that the termination of the marriage between a child's parent and stepparent automatically ends the child's relationship with his or her stepparent. To the extent the

¹ Name withheld to protect the individual's identity.

director misapplied legal precedent regarding a stepchild-steparent relationship, that portion of his decision is hereby withdrawn.

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). Neither physical separation nor legal termination of the marriage will automatically disqualify a stepchild for immediate relative classification. *Id.* at 614. 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. See also *Matter of Mourillon*, 18 I&N Dec. 122, 125-26 (BIA 1981) (affirming *Mowrer* and applying the same inquiry to stepsibling relationships). 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. Such stepchildren will remain eligible for immigrant classification under the self-petitioning provisions of section 204(a)(1)(A)(iv) of the Act if they meet all other eligibility criteria.

In this case, however, the petitioner never met the definition of a stepchild at section 101(b)(1)(B) of the Act because she was over 18 years old when her father married her former stepmother. Under section 101(b)(1)(B) of the Act, stepchildren must be under 18 years old when their parent marries their stepparent. Consequently, the director's ultimate conclusion that the petitioner has not demonstrated a qualifying parent-child relationship is correct. The petitioner submitted her father's marriage certificate, which shows that when he married F-N- on December 4, 2010, the petitioner was 20 years old. Consequently, the petitioner has failed to establish that she had a qualifying relationship as the child of a U.S. citizen as required by section 204(a)(1)(A)(iv) of the Act and the regulation at 8 C.F.R. §§ 204.2(e)(1)(ii), (e)(2)(ii). She has also not established that she was eligible for immediate relative classification based on that relationship under section 201(b)(2)(A)(i) of the Act as required by section 204(a)(1)(A)(iv) of the Act and the regulation at 8 C.F.R. § 204.2(e)(1)(i)(B).

The Director's Other Grounds for Denial

The director also determined without analysis that the petitioner did not submit sufficient evidence to establish her good moral character, that she was subjected to battery or extreme cruelty by her stepmother, and that her stepmother's abuse was a central reason for her filing delay. On appeal, the petitioner provides evidence relevant to these grounds for denial, including documents from state and federal authorities confirming that the petitioner does not have a criminal record; a detailed personal affidavit regarding the abuse and the late filing of the self-petition; and a psychological evaluation. However, as the petitioner has failed to establish that she has a qualifying relationship as the child of a U.S. citizen and her corresponding eligibility for immediate relative classification, we do not reach these additional issues on appeal.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner had a qualifying relationship with

her U.S. citizen stepmother and is eligible for immediate relative classification based on that relationship. Consequently, the petitioner is ineligible for immigrant classification as the abused child of a U.S. citizen pursuant to subsections 204(a)(1)(A)(iv) and (D)(v) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.