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



U.S. Citizenship
and Immigration
Services

Date: **OCT 07 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)

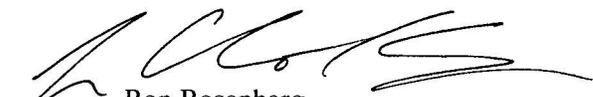
ON BEHALF OF PETITIONER:

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 Director, Vermont Service Center (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 and the petition will remain denied.

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 U.S. citizen parent.

The director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty. On appeal, the petitioner submits a brief.

Applicable Law

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 . . . (E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household...

Section 204(a)(1)(A)(iv) of the Act provides:

An alien who is the child of a citizen of the United States... 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 [Secretary of Homeland Security (Secretary)] 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 citizen parent. . . .

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] 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part:

(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 regulation at 8 C.F.R. § 204.2(e)(2)(i) further states:

(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.

* * *

(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 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 types of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Facts and Procedural History

The petitioner is a citizen of Brazil who was born on March 6, 1995. The petitioner entered the United States on March 15, 2010, as a nonimmigrant visitor. On February 16, 2011, when she was 15 years old, the petitioner was adopted by her aunt and her aunt’s husband, both U.S. citizens. The petitioner filed the instant Form I-360 self-petition on December 4, 2012, when she was 17 years old. The director subsequently issued a Request for Evidence (RFE) that her father subjected her to battery or extreme cruelty. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director denied the petition and counsel filed a timely appeal.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to demonstrate the petitioner’s eligibility for the following reason.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's father did not subject her to battery or extreme cruelty and counsel's claims on appeal do not overcome this ground for denial. In her affidavit, the petitioner described her life with her parents after the adoption as "perfect" and did not discuss any problems until her father was arrested for soliciting a minor for sex. The petitioner's father then absconded before the trial, and the petitioner and her family believe that he is in Brazil, though the petitioner has had no further contact with her father. The petitioner stated that after her father was arrested, her hopes and dreams disappeared. She indicated that she is afraid her father might try to harm her if she is sent back to Brazil, and she fears leaving her mother and her life in the United States. The petitioner did not claim that her father ever battered or sexually abused her, nor did she describe any other actions by her father towards her that are comparable to those described in the regulation at 8 C.F.R. § 204.2(e)(1)(vi) as extreme cruelty.

The petitioner submitted affidavits from eight family members and friends who indicated that the petitioner has been depressed and afraid since her father was arrested, and that she wants to stay with her mother in the United States; but, none of the affiants mentioned any incident of battery or extreme cruelty perpetrated by the petitioner's father against her.

The petitioner also submitted two psychological evaluations written by [REDACTED] a licensed marriage and family therapist. Ms. [REDACTED] reported that the petitioner is afraid her father may try to harm her and is afraid to leave her mother. She stated that the petitioner suffers from post-traumatic stress disorder (PTSD) and severe depression and anxiety, but did not indicate that the petitioner's father had ever harmed her or that she was subjected to battery or extreme cruelty by her father.

On appeal, counsel asserts that the petitioner's father psychologically abused her because he was arrested for a sexual crime against a minor her age, and that his acts may be seen as part of an overall pattern of violence. However, the record contains no evidence of actual or threatened violence the petitioner's father inflicted upon the petitioner. Rather, the record shows that the petitioner's father was charged with crimes committed against another individual, which was unknown to the petitioner until his arrest. The petitioner has not established by a preponderance of the evidence that her father subjected her to battery or extreme cruelty as required by section 204(a)(1)(A)(iv) of the Act.

Qualifying Relationship and Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner has also not shown that she had a qualifying parent-child relationship with her father. At the time her Form I-360 self-petition was filed, the petitioner had not been in the legal custody of her father for at least two years. The adoption judgment granting legal custody to the petitioner's father was entered on February 16, 2011 and her self-petition was filed less than two years later on December 4, 2012. Although the petitioner submitted a declaration from her biological parents in which they granted custody of the petitioner to her adoptive parents before that date, the declaration did not constitute a legal transfer of custody.

See 8 C.F.R. § 204.2(d)(vii)(A) (informal document such as a notarized affidavit is insufficient evidence of legal custody). Because she did not establish that her father subjected her to battery or extreme cruelty, the exception to the two-year legal custody requirement does not apply and the petitioner does not meet the definition of an adopted child at section 101(b)(1)(E)(i) of the Act. Consequently, the petitioner did not have a qualifying relationship with her father and was ineligible for immediate relative classification based on their relationship, as required by section 204(a)(1)(A)(iv) of the Act.

Conclusion

The petitioner has failed to show that her father battered her or subjected her to extreme cruelty. She has also not shown that she had a qualifying relationship with her adoptive father and was eligible for immediate relative classification based on their relationship. She is therefore ineligible for immigrant classification as the abused child of a U.S. citizen 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. The appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.