

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **OCT 09 2014**

Office: VERMONT SERVICE CENTER

File: 

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:

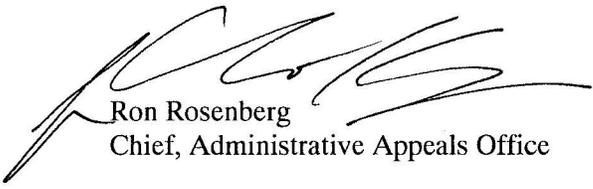


INSTRUCTIONS:

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 further determined that the petitioner did not establish his good moral character. On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

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)(D)(v) of the Act 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 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A) of the Act provides:

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person

of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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 . . . (B) A self-petitioning child who was born in wedlock and an abusive biological father is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parents, and evidence of legal termination of all prior marriages of either parent, if any; (C) A legitimated self-petitioning child and an abusive biological father is the child's birth certificate issued by civil authorities, and evidence of the child's legitimation; (D) A self-petitioning child who was born out of wedlock and an abusive biological father is the child's birth certificate issued by civil authorities showing the father's name, and evidence that a bona fide parent-child relationship has been established between the child and the parent

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who was born on October 20, 1991.¹ The petitioner states that

¹ The record is unclear whether the petitioner's parents were married, either at the time of his birth or any time thereafter. Regardless, the petitioner was born in Guerrero, Mexico, which is governed by the Civil

he entered the United States with his parents in January of 1992 without inspection, admission, or parole. The petitioner's father, J-C-², was a U.S. lawful permanent resident. On October 25, 2008, when the petitioner was 17 years old, J-C- shot and killed H-I-³, the petitioner's mother, before killing himself. The petitioner filed the instant Form I-360 self-petition on October 22, 2012, two days after he turned 21 years old. The director denied the self-petition and counsel timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Review of the entire record of proceeding, shows that the petitioner has 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

Because the petitioner was already 21 years old when he filed his self-petition, he must show that he had a qualifying parent-child relationship with his father as of October 19, 2012, the day before his twenty-first birthday to retain eligibility for immigrant classification under section 204(a)(1)(B)(iii) of the Act. Section 204(a)(1)(D)(v) of the Act, 8 U.S.C. § 1154(a)(1)(D)(v). Unfortunately, on that date, the death of the petitioner's father nearly four years earlier had already ended their parent-child relationship. The petitioner consequently did not have a qualifying parent-child relationship with his father and was ineligible for preference immigrant classification based on such a relationship.

The petitioner also lacked a qualifying relationship with his father as of the date before his twenty-first birthday because his father lost his lawful permanent resident status upon his death, more than two years before this self-petition was filed. To remain eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act, an abused child whose parent lost immigrant status must show that the loss of status occurred within the past two years and was due to an incident of domestic violence. 8 U.S.C. § 1154(a)(1)(B)(iii). Although the record indicates that the petitioner's father's death and resultant loss of immigrant status was due to a tragic incident of domestic violence, more than two years elapsed before this self-petition was filed.

On appeal, counsel incorrectly asserts that there is no two-year limitation which applies to children of lawful permanent residents because children "do not have the awareness to know to apply in time." The language of the statute is clear. The self-petitioner must be "[a]n alien who is the child of an alien

Code of the State of Guerrero, Mexico (the Civil Code). The Civil Code provides that all children have equal rights whether or not they were born within a marriage. See *Codigo Civil del Estado de Guerrero* available at the Congress of Guerrero official website at http://www.conggro.gob.mx/consulta_de_leyes/codigos.htm. Paternal acknowledgment of a child not born in wedlock may be done by including the father's name on the birth record before the Civil Registry Officer. In this case, both of the petitioner's parents are listed on his birth certificate. The evidence in the record also establishes that the petitioner had a bona fide relationship with his father. Accordingly, before his father's death, the petitioner met the definition of child at section 101(b)(1) of the Act.

² Name withheld to protect the individual's identity.

³ Name withheld to protect the individual's identity.

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.” *Id.*

Upon a full review of all the relevant and credible evidence submitted below, the petitioner has not demonstrated that he had a qualifying parent-child relationship with his father as of the date before his twenty-first birthday and his self-petition was not filed within two years of his father’s loss of lawful permanent resident status. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act.

The Abuse was One Central Reason for the Filing Delay

The petitioner has demonstrated that the delay in filing his Form I-360 self-petition was related to J-C-’s abuse. However, because he did not establish his eligibility under section 204(a)(1)(B)(iii) of the Act, he is ineligible for the late-filing exception at section 204(a)(1)(D)(v) of the Act.

Good Moral Character

The director determined without discussion or analysis that the petitioner did not establish his good moral character. The regulation at 8 C.F.R. § 204.2(e)(2)(v) states that primary evidence of a petitioner’s good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in October 2009 and ending in October 2012).

The relevant evidence in the record contains the petitioner’s affidavit, criminal record search results from [REDACTED] County, North Carolina with attached court disposition, criminal record search results from [REDACTED] County, North Carolina with attached court documents, and a letter of support from his former neighbor. The [REDACTED] County search results showed that on January 27, 2009, the petitioner was convicted of hunting deer with a spotlight at night, a misdemeanor offense, and a traffic violation. He was sentenced to 12 months of unsupervised probation. The [REDACTED] County search results showed that the petitioner was arrested for possession of a schedule II controlled substance on March 27, 2009. The petitioner accepted deferred prosecution under North Carolina general statute section 90-96 and the charge was dismissed after successful compliance of his conditional discharge. Section 90-96 of North Carolina’s general statutes provides that “the court shall, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require.” *See* N.C. GEN. STAT. § 90-96 (West 2009). The petitioner submitted evidence from the Superior Court of [REDACTED] County that he complied with the “90-96 judgment” and that the charges were dismissed. As the record does not show that the petitioner was found guilty by a judge or jury, or has entered a plea of guilt or admitted sufficient facts to warrant a finding of guilt, as required by the first prong of section 101(a)(48)(A) of the Act, the petitioner’s offense is not a conviction within the definition of section 101(a)(48)(A) of the Act.

In his affidavits submitted below, the petitioner credibly explained the circumstances surrounding his drug arrest and that he successfully completed the 90-96 requirements. He further explained that he was able to make positive changes in his life and obtained his high school diploma equivalency by passing his General Educational Development (GED) tests on June 2, 2010. Mr. [REDACTED], the petitioner's former neighbor, stated in his letter that after the petitioner's parents died, the petitioner lost his way but has since been able to get his life back together. Mr. [REDACTED] credibly described his role in helping the petitioner with his legal problems in 2009 which included bailing the petitioner out of jail after his arrest. He further attested to the ways in which the petitioner has changed and that the petitioner is responsible, hardworking, and a person of good moral character. Upon *de novo* review of the court documents, personal affidavits, and the letter of support from Mr. [REDACTED] who knowledgeably attested to the petitioner's traumatic past, arrest, and rehabilitation, the record establishes the petitioner's good moral character, as required by section 204(a)(1)(B)(iii) of the Act.

Conclusion

Although the petitioner has established his good moral character, he has not shown that he had a qualifying parent-child relationship and was eligible for preference immigrant classification based on that relationship as of the day before his 21st birthday. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act. In these proceedings, the petitioner bears the burden to establish his 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. Accordingly, the appeal will be dismissed and the self-petition will remain denied.

ORDER: The appeal is dismissed.