

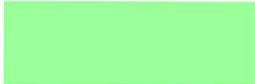


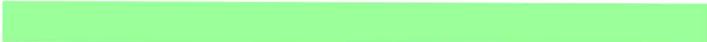
U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **SEP 10 2014**

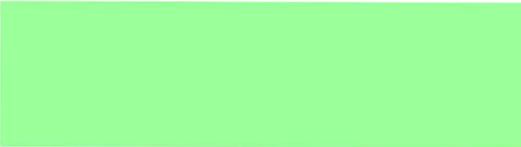
Office: VERMONT SERVICE CENTER

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.

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 sustained.

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 because the petitioner's mother and stepfather divorced before she filed her self-petition. The director concluded that the petitioner did not have a qualifying relationship with her United States citizen stepparent, and was ineligible for immediate relative classification based on such a qualifying relationship. On appeal, the petitioner, through counsel, submits a brief.

*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 [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. . . .

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:

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] 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 evidentiary guidelines 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 . . . .

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Mexico who was born on [REDACTED], 1991. The petitioner claims she entered the United States without inspection in April of 1994 when she was three years old. On [REDACTED] 2004, when the petitioner was 13 years old, her mother married F-T-<sup>1</sup>, a U.S. citizen. Her mother and F-T- were divorced on [REDACTED] 2012, when the petitioner was 21 years old. The petitioner filed the instant Form I-360 self-petition on October 22, 2012. The director subsequently issued a request for evidence (RFE) of the status of her mother's marriage to F-T- and evidence of her mother's previous divorces. The petitioner, through counsel, timely responded with this evidence. The director denied the petition determining that the petitioner did not have a qualifying relationship with her stepfather because he and her mother divorced on [REDACTED] 2012, ten days before the instant petition was filed. The petitioner timely appealed. We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record demonstrates the petitioner's eligibility for the following reasons.

#### *The Petitioner is Eligible under the Self-Petitioning Provisions for Children as Amended in 2005*

The director erroneously concluded that the petitioner did not have a qualifying parent-child relationship because her mother and stepfather divorced before she filed her self-petition. The

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

divorce occurred after the petitioner turned 21. Consequently, the petitioner had a qualifying parent-child relationship with her former stepfather before she turned 21 and she remains eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act. Section 204(a)(1)(D)(v) of the Act clearly states that self-petitioners “who qualified to file a petition under subparagraph (A)(iv)” before they turned 21, but did not then file “shall be treated as having filed a petition under such subparagraph” if the self-petitioner files before turning 25 and “shows that the abuse was at least one central reason for the filing delay.” 8 U.S.C. § 1154(a)(1)(D)(v). The statutory language is clear and mandatory: so long as an individual met the requirements of section 204(a)(1)(A)(iv) of the Act prior to turning 21 and meets the additional requirements to excuse a late filing, she or he “shall be treated as having filed a petition” prior to turning 21.<sup>2</sup> Accordingly, individuals who met all the eligibility requirements for self-petitioning abused children, including a qualifying relationship with a U.S. citizen parent, before their twenty-first birthday do not lose eligibility after that date provided they meet the additional requirements to excuse a late filing.

Here, the petitioner’s mother and F-T- were married on [REDACTED], 2004, when the petitioner was 13 years old. The petitioner’s mother and stepfather were divorced on [REDACTED] 2012, when the petitioner was already 21 years old. As of the day before she turned 21 ([REDACTED], 2012), the petitioner met the definition of a child at section 101(b)(1)(B) of the Act. She consequently had a qualifying parent-child relationship with her former stepfather and was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iv) of the Act.

#### *The Abuse was One Central Reason for the Filing Delay*

The petitioner has also demonstrated that the delay in filing her Form I-360 self-petition was related to F-T-’s abuse. To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a petitioner need not show that the abuse was the only cause for the delay. Rather, the petitioner must establish that a stepparent’s abuse was “at least one central

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<sup>2</sup> Even if the language of section 204(a)(1)(D)(v) of the Act were unclear, the legislative history elucidates the Congressional intent to extend protection to those abused as children without requiring the individual to remain in the abusive relationship after having met all the eligibility requirements for self-petitioning children, provided the abuse was a central reason for the filing delay and the individual files prior to age 25. The self-petitioning provisions for abused children were first enacted in 1994. Section 40701(a) of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (Sept. 13, 1994). In 2000, Congress amended these provisions to extend eligibility to children whose abusive parent had, within the past two years, lost U.S. citizenship or lawful permanent residency due to an incident of domestic violence. Victims of Trafficking and Violence Protection Act of 2000, Section 1503(b)(2), Title V, Division B, Pub. L. No. 106-386 (Oct. 28, 2000). At the same time, Congress provided age-out protections for self-petitioning children (and derivative children of abused spouses) whose petitions were filed prior to their twenty-first birthday, but who had not obtained lawful permanent residency by that date. *Id.* at section 1503(d)(2) (adding subsections 204(a)(1)(C) and (D) of the Act). In 2005, Congress extended eligibility even further to protect individuals who were abused as children, but who failed to file before turning 21, in central part, due to the abuse. Section 805(c), Violence Against Women and Dept. of Justice Reauthorization Act of 2005, Pub. L. 109-162 (Jan. 5, 2006). The history of these statutory amendments evinces the Congressional intent to expand, rather than constrict, the scope of the self-petitioning provisions for abused children.

reason for the filing delay,” and must demonstrate, by a preponderance of the relevant, credible evidence, a nexus between the abuse and the filing delay that is more than incidental or tangential.

Here, the petitioner filed her Form I-360 self-petition just six months after her twenty-first birthday and just ten days after her mother and stepfather were divorced. In her affidavit, the petitioner credibly explained how the brief delay in filing was related to her former stepfather’s abuse. The petitioner recounted that after her mother separated from F-T- and initiated their divorce, her younger siblings struggled with the separation, their school performance suffered and she took on the role of their primary caregiver. The petitioner described how F-T- purposely delayed the divorce because he did not want her mother to have custody of her younger siblings and that he often threatened to have her mother deported. The petitioner explained that if F-T- could not reach her mother, he would constantly call her instead implicating her in his threats to harm her and her mother. The record documents F-T-’s cycle of abuse throughout his relationship to the petitioner and her family, including a police report and order of protection issued shortly before the divorce and submitted on appeal. The preponderance of the evidence shows that F-T-’s abuse caused the petitioner and her family to leave him for their protection and that their ensuing hardships and his ongoing threats contributed to the petitioner’s short delay in filing her self-petition. The petitioner has demonstrated that F-T-’s abuse was at least one central reason for her filing delay and she is eligible for the late-filing exception at section 204(a)(1)(D)(v) of the Act.

*Conclusion*

In these proceedings, the petitioner bears the burden to establish her 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 been met. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.