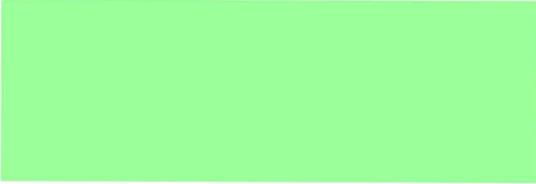




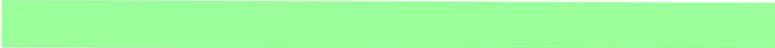
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 17 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:

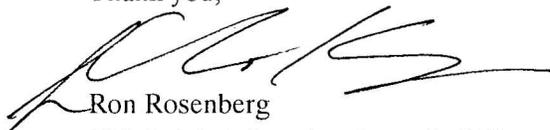


INSTRUCTIONS:

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 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 on the basis of her determination that the petitioner did demonstrate a qualifying relationship to her U.S. citizen stepparent and did not show that her stepfather'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 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Peru, was born on September 6, 1989 and entered the United States on December 23, 2002 on a nonimmigrant visitor visa when she was 13 years old. On November 6, 2006, when the petitioner was 17 years old, her mother married D-C-, a U.S. citizen.¹ The record reflects that that D-C- subjected the petitioner and her mother to battery and extreme cruelty between December 2006 and July 2007, when he was incarcerated for a drug related conviction. The petitioner reported that she and her mother visited her stepfather one time after his incarceration.

The petitioner filed the instant Form I-360 self-petition on August 1, 2011 when she was 22 years old. The director denied the petition because the petitioner was over 21 and no longer met the definition of a child. The director further determined that the petitioner did not establish that her stepfather's abuse was one central reason for her failure to file her self-petition before she turned 21 years of age. Counsel timely appealed by submitting a brief and additional documents.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has established that she had a qualifying relationship with her abusive U.S. citizen stepfather; however, counsel's claims and the additional evidence submitted on appeal do not show that her stepfather's abuse was a central reason for her failure to timely file the instant self-petition. Therefore, the appeal will be dismissed.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner's administrative record contains evidence of D-C-'s U.S. citizenship and a marriage certificate showing that her mother married D-C- on November 6, 2006, when the petitioner was 17 years old, and they remain married. Accordingly, the record indicates that a qualifying family relationship existed between the petitioner and D-C- as of the day before she turned 21 (September 5, 2010). On that date, she met the definition of a child at section 101(b)(1)(B) of the Act. She consequently had a qualifying parent-child relationship and was eligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iv) of the Act.

The Abuse was Not One Central Reason for the Filing Delay

¹ Name withheld to protect the individual's identity.

Although the petitioner met the eligibility requirements at section 204(a)(1)(A)(iv) of the Act as of the day before she turned 21, she has not demonstrated that the filing delay was related to her stepfather'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, to establish that a stepparent's abuse was "at least one central reason for the filing delay," the petitioner 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.

In her July 26, 2011 affidavit, the petitioner stated that she and her mother resided with D-C- between November 2006 and July 2007, during which time both she and her mother were subjected to D-C-'s abuse. The petitioner recounted that D-C- would disappear for days at a time, and she and her mother eventually learned that D-C- had a history of drug and alcohol abuse, drug dealing and incarceration. The petitioner described a pattern of abuse and reconciliation between D-C- and her mother, and stated that during a period of reconciliation, D-C- hired an immigration lawyer and filed immigrant visa petitions for both the petitioner and her mother. However, D-C- again disappeared, and at the end of 2007, one of his friends informed the petitioner's mother that he had been arrested. The petitioner stated that she and her mother visited D-C- where he was being held, learned that he had been sentenced to several years of incarceration and would be transferred to a prison too far away for the petitioner and her mother to visit. A State of New Jersey Department of Corrections record provided by the petitioner indicates that D-C- was incarcerated on July 5, 2007, with a projected release date of March 27, 2012.

The petitioner and her mother attended their November 2007 immigration interview alone because D-C- was incarcerated, and the petitions were ultimately denied. The petitioner stated that life was difficult at that point, and she began to work to help support the family, sacrificing her education and personal life. The petitioner asserted that she and her mother were in therapy to address their depression caused by their relationship with D-C-.

In response to a request for evidence (RFE), the petitioner submitted an affidavit dated January 16, 2013, in which she attributed her failure to timely file her Form I-360 self-petition to inexperience in life and lack of information from a prior attorney. The petitioner stated that she did not believe that she was eligible for any immigration benefits, until her mother found an attorney who informed her that she could file the instant self-petition.

On appeal, counsel asserts that the petitioner spent her teenaged years dealing with her abusive stepfather and recovering from his abuse, and was thus not in a position to address her immigration status. However, no affidavit from the petitioner was provided on appeal to support this assertion. In addition to the brief, counsel submitted articles regarding an unrelated high-profile kidnapping in Utah, and other documents, including selected school records related to the petitioner, which indicate that she eventually completed high school and enrolled in

community college. The documents also include pay statements and bills in the name of the petitioner, which show that the petitioner has worked since 2009, and been responsible for some household expenses.

A review of all of the relevant evidence of record reveals an insufficient nexus between the petitioner's stepfather's abuse and the filing delay. The record indicates that the petitioner's stepfather was incarcerated in July 2007 and after the petitioner's and her mother's one visit to the jail, the petitioner had no connection to D-C- in the ensuing four years before she filed her self-petition. The petitioner credibly attested to the economic and emotional hardships she and her mother faced after her stepfather was incarcerated and their immigrant visa petitions were denied. She did not, however, provide any probative details of any effects of the abuse that contributed to the delay in the filing of her petition. For example, the record does not indicate that the petitioner's stepfather continued to threaten or harass the petitioner or her mother, or used the petitioner's lack of immigration status as a means of continuing his abuse or exerting coercive control over the petitioner after he was incarcerated or at any point during the subsequent four years before she filed this self-petition. As the petitioner has not demonstrated that her stepfather's abuse was at least one central reason for her filing delay, she is ineligible for the late-filing waiver at section 204(a)(1)(D)(v) of the Act.

Conclusion

The petitioner established that she had a qualifying relationship with her stepfather and was eligible for immediate relative classification based on such a relationship as of the day before her twenty-first birthday. However, she did not demonstrate that her stepfather's abuse was at least one central reason for the delay in filing her self-petition. 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.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.