



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

Office: VERMONT SERVICE CENTER

FILE:

SEP 26 2014

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 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 The director’s decision shall be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a citizen of Mexico who 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 the abused child of a United States citizen.

The director denied the petition for failure to establish a qualifying parent-child relationship with a U.S. citizen and corresponding eligibility for immediate relative classification because the petitioner’s mother and former stepfather divorced before the petition was filed. On appeal, counsel claims the petitioner remains eligible despite the divorce.¹

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 . . . (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 two 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] 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. For purposes of this clause, residence includes any period of visitation.

Section 204(a)(1)(J) of the Act further states:

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

¹ On the appeal notice (Form I-290B), counsel stated that she would submit a brief and/or additional evidence to the AAO within 30 days of May 13, 2013. To date, the AAO has received nothing further from counsel.

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.

Facts and Procedural History

The petitioner is a citizen of Mexico who was born on June 3, 1992. The petitioner claims that he entered the United States on September 28, 1995 without inspection. On February 14, 2000, his mother married S-M-², a United States citizen. The petitioner's mother and stepfather divorced on December 27, 2007. The petitioner filed the instant Form I-360 self-petition on January 20, 2012, when he was 19 years old.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the director did not consider whether the petitioner had a continuing relationship with his former stepfather after his parents' divorce, the matter will be remanded to the director for further action.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner's mother and his former stepfather were married on February 14, 2000, when the petitioner was seven years old, and they subsequently divorced on December 27, 2007, when the petitioner was 15 years old. The petitioner filed this self-petition over four years later on January 20, 2012 when he was 19 years old. The director erroneously concluded that the divorce automatically ended the petitioner's relationship with his former stepfather and determined that the petitioner was not eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act as the abused child of a U.S. citizen.

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, the director erroneously applied the law governing stepparent-stepchild relationships. Accordingly, the petition will be remanded to the director for issuance of a Request for Evidence

² Name withheld to protect the individual's identity.

(RFE) to afford the petitioner the opportunity to demonstrate a continuing relationship in fact, if any, between himself and his former stepfather from the date his mother and former stepfather divorced until the date he filed this Form I-360 self-petition.

Evidence of a continued stepparent-stepchild relationship may include, but is not limited to: affidavits from friends, family members, teachers, church leaders or members, or any other individuals with knowledge of the child's relationship with the former stepparent; telephone, electronic mail, letters or any other correspondence or other evidence of continued communication; relevant documents from schools, social services providers, or family court proceedings; family photographs; documentation of ongoing financial support or obligations; or any other relevant and credible evidence of a continued relationship in fact between the child and the former stepparent.

Conclusion

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent and corresponding eligibility for immediate relative classification based upon that relationship because the petitioner's mother and former stepfather divorced before the petition was filed. The director, however, failed to consider whether, at the time of filing, a family relationship continued to exist between the petitioner and his former stepfather. The matter is therefore remanded to the Vermont Service Center for further action consistent with this decision.

In these proceedings, the petitioner bears the burden of proof to establish his 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).

ORDER: The April 11, 2013 decision of the Vermont Service Center is withdrawn. The petition is remanded to that service center for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.