



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **APR 10 2015**

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:

SELF-REPRESENTED

Enclosed is the decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are listed at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location and other requirements. **Please do not mail any motion directly to the AAO.**

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

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 as moot because the petitioner remains a derivative beneficiary of his mother's approved immigrant visa petition. The matter will be returned to the director for further action.

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 his United States citizen stepparent.

The director denied the petition for failure to establish the requisite qualifying relationship to a U.S. citizen because the petitioner's mother married her U.S. citizen spouse after the petitioner attained 18 years of age. On appeal, the petitioner submits a brief.

*Pertinent Facts and Procedural History*

The petitioner, a native and citizen of Brazil, was born on [REDACTED]. The petitioner's administrative record reflects that he entered the United States on [REDACTED], when he was 11 years old, without inspection by an immigration officer. The petitioner was apprehended shortly after his arrival by immigration authorities, and placed in removal proceedings. The petitioner failed to appear for his immigration hearing, and was ordered removed in his absence on March 28, 2005.

The petitioner represents that he and his mother, [REDACTED], began living with D-N-, a U.S. citizen, in December 2008. The record reflects that Ms. [REDACTED] and D-N- married on [REDACTED] in [REDACTED] New Jersey, one month after the petitioner turned 18 years old. U.S. Citizenship and Immigration Services (USCIS) records show that on [REDACTED] when the petitioner was 20 years old, the petitioner's mother, [REDACTED] filed a Form I-360 self-petition based on D-N-'s abuse.<sup>1</sup> Ms. [REDACTED] listed the petitioner as her son in Part 9 of her Form I-360. On October 7, 2013, the petitioner filed the instant self-petition, also based on D-N-'s abuse. Ms. [REDACTED] Form I-360 was approved on January 9, 2014. Although the petitioner was included as a derivative beneficiary on his mother's approved petition, Ms. [REDACTED] administrative record does not appear to contain a copy of an approval notice for the petitioner. The director denied the petitioner's instant self-petition on January 23, 2014, noting that the denial did not affect the petitioner's eligibility as a derivative of his parent's petition.

We conduct appellate review on a *de novo* basis. As the petitioner remains a derivative beneficiary of his mother's approved immigrant visa petition, the appeal will be dismissed as moot.

*The Petitioner Remains Eligible for Immigrant Classification under the Relevant Law*

The instant petition was filed under section 204(a)(1)(A)(iv) of the Act, which provides self-petitioning provisions for children who have been subjected to battery or extreme cruelty by their

<sup>1</sup> Ms. [REDACTED] Form I-360 receipt number was [REDACTED]

U.S. citizen parent. Children who qualify as derivative beneficiaries of their alien parent's self-petition approved under the provisions for abused spouses of U.S. citizens at section 204(a)(1)(A)(iii) of the Act do not need to file their own Form I-360 for classification under section 204(a)(1)(A)(iv) of the Act. See Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (providing for classification of the alien "and any child of the alien"). Such children remain derivative beneficiaries eligible to apply for adjustment of status if they are in the United States. Sections 101(a)(51)(A) and 245(a) of the Act, 8 U.S.C. §§ 1101(a)(51)(A), 1255(a).

Although he is now 21 years old, the petitioner may still be classified as an immediate relative child under the age-out protections enacted by the Child Status Protection Act. See section 201(f)(4) of the Act, 8 U.S.C. § 1151(f)(4) (stating that age-out protections for immediate relative children apply to derivatives of self-petitioners); *Age-Out Protections Afforded Battered Children*, USCIS Memorandum (Aug. 17, 2004) (same). The age-out protections for Violence Against Women Act (VAWA) derivative beneficiaries are enumerated at section 204(a)(1)(D)(i)(III) of the Act, which states:

Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) [a spousal self-petition in which the child is included as a derivative beneficiary] that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). *No new petition shall be required to be filed.*

(emphasis added).

In this case, the petitioner's mother's Form I-360 was filed before the petitioner turned 21. The petitioner was included as a derivative beneficiary of his mother's self-petition and he has not yet been admitted or approved for lawful permanent residency. Although the petitioner is now 21, the record indicates that he remains unmarried. Accordingly, he remains a VAWA self-petitioner, as defined at section 101(a)(51)(A) of the Act.

As the petitioner remains eligible for immigrant classification as the derivative beneficiary of his mother's approved petition, further pursuit of the matter at hand is moot. Consequently, the appeal will be dismissed and the matter returned to the Vermont Service Center for further processing.

**ORDER:** The appeal is dismissed as moot. The matter is returned to the Vermont Service Center for further action in accordance with the foregoing discussion.