



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: AUG 05 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: 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:



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

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 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 parent.

The director denied the petition because she determined that the petitioner had not established a qualifying parent-child relationship with a citizen of the United States and corresponding eligibility for immediate relative classification.<sup>1</sup> The director also determined that the petitioner had not established that he resided with a U.S. citizen parent.

On appeal, the petitioner submits additional evidence.

*Relevant Law and Regulations*

Section 101(b)(1)(A) of the Act, 8 U.S.C. § 1101(b)(1)(A), defines a child as an unmarried person under 21 years of age who is born in wedlock.

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] 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.

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].

---

<sup>1</sup> Although an individual may automatically acquire U.S. citizenship at birth in certain circumstances, the petitioner does not appear to have filed a Form N-600, Application for Certificate of Citizenship, requesting a determination whether he derived U.S. citizenship from his father. See generally section 301 of the Act.

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iv) of the Act are explained at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part, the following:

(iii) *Citizenship or immigration status of the abuser.* The abusive parent must be a citizen of the United States or a lawful permanent resident of the United States . . . . Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident will not be automatically upgraded to immediate relative status. The self-petitioning child would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioning child continues to meet the self-petitioning requirements.

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

The evidentiary guidelines 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 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, if any . . . .

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

*Pertinent Facts and Procedural History*

On [REDACTED], the petitioner's mother married O-G-, a U.S. citizen. The petitioner was born in Mexico during this marriage on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on [REDACTED] when he was 17 years old. On August 20, 2014, the director issued a request for evidence (RFE) that, among other things, the petitioner had a qualifying relationship with his U.S. citizen father and corresponding eligibility for immediate relative classification, and that the petitioner resided with his father. The petitioner provided a response, which the director found insufficient on these same grounds. The director denied the petition and the petitioner timely appealed.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, shows that the petitioner has overcome the director's grounds for denial for the following reasons.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

The petitioner submitted a marriage certificate for his mother and O-G-, who were married on [REDACTED], and his birth certificate showing his mother and O-G- as his biological parents. There is no evidence that they divorced. Moreover, on appeal, the petitioner submits a statement from his mother in which she declares she has only been married to O-G- and has never divorced. The petitioner also submitted a copy of O-G-'s Texas birth certificate. Accordingly, the petitioner has established that he met the definition of a child at section 101(b)(1)(A) of the Act at the time he filed the petition. He consequently has a qualifying parent-child relationship with O-G- and was eligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iv) of the Act. The director's determination to the contrary shall be withdrawn.

*Joint Residence*

The petitioner submitted a letter, motel receipts, police reports, school reports, an affidavit and a declaration as evidence that he resided with his father. On appeal, the petitioner submits a letter from a motel confirming that the petitioner resided there for several years with his father, mother, and brother. He also submits correspondence, medical records, and other documents showing that he and his father shared a common address in [REDACTED]. Moreover, the petitioner provides lease agreements and a birth registration reflecting that the petitioner and his father shared the same residence. Accordingly, the petitioner has established that he shared a joint residence with his U.S. citizen father, as required by section 204(a)(1)(A)(iv) of the Act. The petitioner also has overcome this portion of the director's decision.

*Conclusion*

On appeal, the petitioner has overcome the director's grounds for denial and he is consequently eligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act.

(b)(6)

NON-PRECEDENT DECISION

Page 5

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 (AAO 2010). Here, the petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.