



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-A-N-

DATE: DEC. 16, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, an individual living in Romania, seeks to immigrate as a child who has been battered or subjected to extreme cruelty by her stepfather, a United States citizen. *See* section 204(a)(1)(A)(v) of the Act, 8 U.S.C. § 1154(a)(1)(A)(v). The Director, Vermont Service Center, denied the petition and we summarily dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motions will be granted and the matter remanded to the Director for further proceedings.

I. 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)(v) of the Act further states that an alien who

- (I) is the . . . child living abroad of a citizen who...
 - (cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and
- (II) is eligible to file a petition under clause (iii) or (iv) shall file such a petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable.

In addition, section 204(a)(1)(D)(v) of the Act provides:

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

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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.

(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

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner was born in Romania on [REDACTED]. She entered the United States on February 27, 2009, as the K-2 dependent child of a K-1 nonimmigrant fiancée, her mother. On [REDACTED] 2009, the Petitioner's mother married J-A-, a U.S. citizen.¹ The Petitioner and her mother returned to Romania in January of 2010, and her mother died on [REDACTED] 2010. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, nearly four years later on March 3, 2014, when she was 21 years of age and still living in Romania. On April 17, 2014, the Director issued a request for evidence (RFE) that, among other things, the Petitioner had a qualifying relationship with her U.S. citizen stepfather and her corresponding eligibility for immediate relative classification. 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 summarily dismissed the appeal because the record did not contain a brief or statement

¹ Name withheld to protect the individual's identity.

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demonstrating an error in the Director's decision. The Petitioner has filed a motion to reopen and reconsider our decision to summarily dismiss the appeal. We review these proceedings *de novo*.

III. QUALIFYING RELATIONSHIP AND CORRESPONDING ELIGIBILITY FOR IMMEDIATE RELATIVE CLASSIFICATION

We are determining the Petitioner's eligibility as an abused child of a U.S. citizen parent under section 204(a)(1)(D)(v) of the Act because she was over the age of 21 but under the age of 25 as of the date she filed the Form I-360.²

The Petitioner submitted J-A-'s Indiana birth certificate establishing that he was born a U.S. citizen and the Petitioner's own birth certificate showing that she was born on [REDACTED]. The Petitioner also submitted the marriage certificate for her mother and J-A- showing that they were married on [REDACTED] 2009, when the Petitioner was [REDACTED] years old. She also provided a copy of her mother's death certificate documenting her mother's death in Romania on [REDACTED] 2010, thus terminating the marital relationship between her mother and J-A-. The Director concluded that the Petitioner did not establish a qualifying relationship with J-A-, as the death of the Petitioner's mother automatically terminated the Petitioner's relationship with her stepfather. The Director therefore also concluded that the Petitioner was also not eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act.

To be eligible for classification as an abused child of a U.S. citizen the Petitioner is required to establish, in part, that she "qualified to file a [Form I-360] as of the day before the date on which [she] attained 21 years of age." Section 204(a)(1)(D)(v) of the Act. The phrase "qualified to file" means that all qualifying factors must have been in place as of the day before the child turned twenty-one.³ [REDACTED], was the day before the Petitioner's 21st birthday, so we look at the qualifying factors present in the Petitioner's case as of that date.

The Petitioner's mother died on [REDACTED] 2010; however, her death did not necessarily terminate the stepparent/stepchild relationship between J-A- and the Petitioner. *Cf. Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981) (finding that the divorce of a child's parents did not automatically terminate a stepparent-stepchild relationship). 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

² The Petitioner also filed her Form I-360 from abroad; however, as she had a qualifying relationship with her stepfather at the time of the abuse, and the abuse occurred in the United States, her residence outside of the United States at the time of filing is not disqualifying. *See* section 204(a)(1)(A)(v) of the Act.

³ USCIS Policy Memorandum PM-602-0048, *Continued Eligibility to File for Child VAWA Self-Petitioners After Attaining Age 21: Revisions to Adjudicator's Field Manual (AFM) Chapter 21.14* (Sept. 6, 2011), <http://connect.uscis.dhs.gov/workingresources/immigrationpolicy/Documents/PM-602-0048.pdf>.

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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.

On motion, the Petitioner provides a copy of a 2010 decision that we issued and argues that we suggested that a petitioner who meets the definition of a child need only establish a relationship with a stepparent at any time before turning 21 years of age.⁴ That decision, however, does not stand for the proposition that the Petitioner advances. In that decision, we looked at the qualifying factors as of the day prior to the child turning 21 years of age as required by section 204(a)(1)(D)(v) of the Act, determining that she qualified for classification as an abused child of a U.S. citizen. That decision does not suggest, as the Petitioner claims, that as long as a stepchild/stepparent relationship existed at any time prior to the child turning 21 years of age, then no further inquiry into the relationship is required.

Based on the evidence presently in the record, we cannot determine whether or not the Petitioner had a continuing stepparent-stepchild relationship with J-A- at the time of filing this petition because the Director did not address it below nor advise the Petitioner of the types of evidence that might demonstrate a continuing relationship in fact in the RFE. Accordingly, the petition will be remanded to the Director for issuance of a new RFE to afford the Petitioner the opportunity to demonstrate a continuing relationship in fact, if any, between the Petitioner and J-A- as of the day before the Petitioner's 21st birthday, or [REDACTED]

IV. THE ABUSE WAS NOT ONE CENTRAL REASON FOR THE FILING DELAY

As stated previously, the Petitioner filed the Form I-360 after she had turned 21 years of age but while under the age of 25. To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, the Petitioner need not show that the abuse was the only cause for the delay. Rather, the Petitioner must establish that her stepfather's abuse was "at least one central 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. Accordingly, in issuing a new decision, the Director also must consider whether or not the Petitioner has established that her late-filing of the petition was related to J-A-'s abuse.

V. CONCLUSION

The Director denied the petition finding that the Petitioner did not establish a qualifying relationship with a U.S. citizen parent and her corresponding eligibility for immediate relative classification based upon that relationship because the Petitioner's mother died. The Director, however, did not consider whether, as of the day before the Petitioner's 21st birthday, a family relationship continued to exist between the Petitioner and her stepfather, and whether the Petitioner's late-filing of the petition was related to her stepfather's abuse. The matter is therefore remanded to the Vermont Service Center for further action consistent with this decision.

⁴ This 2010 decision is an unpublished precedent that is not binding on the agency. See 8 C.F.R. § 103.3(c).

In these proceedings, the Petitioner bears the burden of proof 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).

ORDER: The motion to reopen and reconsider is granted, and the matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of I-A-N-*, ID# 15026 (AAO Dec. 16, 2015)