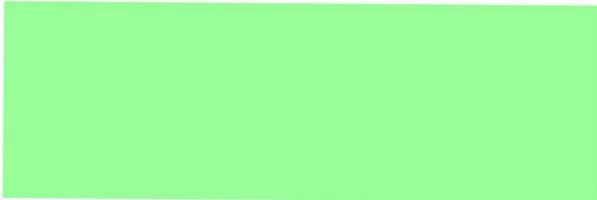
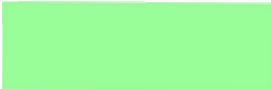


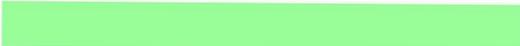


U.S. Citizenship  
and Immigration  
Services

(b)(6)

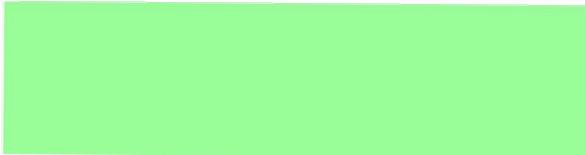


Date: **JAN 21 2015** Office: VERMONT SERVICE CENTER File: 

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 Acting 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 his United States citizen stepparent. The director denied the petition for failure to demonstrate that the petitioner was battered or subjected to extreme cruelty by his U.S. citizen stepfather, and that he resided with his stepfather.

*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)(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 eligibility requirements are explained further at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part, the following:

(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. 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.

\* \* \*

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

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.

\* \* \*

(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.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Zimbabwe, was born on September [REDACTED]. He entered the United States as a nonimmigrant visitor on December 25, 1998. On June [REDACTED] the petitioner's parents divorced, and on October [REDACTED] when the petitioner was 16 years old, his mother married M-C-, a U.S. citizen.<sup>1</sup> The petitioner filed the instant Form I-360 self-petition on October [REDACTED] when he was 18

<sup>1</sup> Name withheld to protect the individual’s identity.

years old. U.S. Citizenship & Immigration Services (USCIS) records indicate that the petitioner's mother filed a Form I-360 self-petition on the same day, listing the instant petitioner as her child on that self-petition. With his initial Form I-360 submission, the petitioner provided evidence related to his mother's relationship with M-C-, but did not provide any evidence to establish that he resided with M-C- or that M-C- abused him. The director issued a request for evidence (RFE) of the petitioner's residence with M-C- and battery or extreme cruelty, among other issues. In response, the petitioner submitted a personal affidavit in which he indicated that he was not personally abused, and referred to himself as a "beneficiary" of his mother's petition. The director found the evidence insufficient to establish the petitioner's eligibility for the benefit sought, and denied the petition. The petitioner timely appealed, submitting a brief.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

The director did not err in finding that the petitioner did not establish that M-C- battered him or subjected him to extreme cruelty. With his initial Form I-360 submission, the petitioner provided documentation regarding his mother's relationship with M-C-, but did not provide a personal affidavit. The petitioner submitted an affidavit from his mother, dated September 7, 2011, in which she described incidents that occurred between her and M-C-, and stated that M-C- ultimately left when the petitioner confronted M-C-, told M-C- that he was not scared of him, and that he was going to call the police. In response to the RFE, the petitioner provided an undated personal affidavit in which he stated that he (the petitioner) "was not a subject of any battery or extreme cruelty," but that he observed on one occasion that M-C- had pushed his mother onto the floor, and he told M-C- that he was going to call the police.

On appeal, the petitioner presents arguments related to his mother's self-petition and refers to himself as a "derivative beneficiary." The petitioner does not state on appeal, or present any evidence to indicate, that he was battered or subjected to extreme cruelty by his U.S. citizen stepfather.

The child of a self-petitioning abused spouse may be a derivative beneficiary of his parent's self-petition without filing a separate petition. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(4). However, as here, where a child files his own self-petition under section 204(a)(1)(A)(iv) of the Act, he must establish his own eligibility as an alien child battered or subjected to extreme cruelty by his United States citizen stepparent. In the instant matter, the petitioner has filed his own self-petition, but seeks to establish his eligibility based on his mother's claim that M-C- abused *her*. Although the petitioner may benefit from his mother's self-petition if approved, he may not establish eligibility for his own self-petition based on his mother's claim of

abuse.<sup>2</sup> The petitioner has represented that M-C- did not batter him or subject him to extreme cruelty. Consequently, the petitioner is ineligible for immigrant classification based on his relationship to his U.S. citizen stepfather, under section 204(a)(1)(A)(iv) of the Act.<sup>3</sup>

*Conclusion*

The petitioner failed to establish that his U.S. citizen stepfather battered him or subjected him to extreme cruelty. 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.

The petitioner bears the burden of proof to establish his eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed

**ORDER:** The appeal is dismissed.

---

<sup>2</sup> USCIS records reflect that the petitioner's mother's Form I-360 self-petition was denied by the director and dismissed by us on appeal.

<sup>3</sup> As we have determined the petitioner is not eligible on this ground, we need not make any determination regarding whether the petitioner has established that he resided with his U.S. citizen stepparent.