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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **JAN 29 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:
[REDACTED]

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting 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 her United States citizen stepparent.

The director denied the petition because the petitioner filed when she was over 21 years old and did not demonstrate that her stepfather's abuse was a central reason for her filing delay. Accordingly, the director determined that the petitioner had failed to establish a qualifying parent-child relationship with a citizen of the United States and corresponding eligibility for immediate relative classification.

On appeal, the petitioner makes a statement and includes previously submitted evidence.

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 [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)(D)(v) of the Act further states:

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 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 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, and evidence of legal termination of all prior marriages of either parent, if any

Pertinent Facts and Procedural History

The petitioner is a citizen of Jamaica who was born on October [REDACTED]. The petitioner filed the instant Form I-360 self-petition on December 13, 2011 when she was 23 years old. On her Form I-360 self-petition, the petitioner indicated that she entered the United States in 1990 without inspection. On July [REDACTED] when the petitioner was 11 years old, her mother married L-Y¹, a U.S. citizen. On December 20, 2011, the director first issued a request for evidence (RFE) of the petitioner's good moral character, and the petitioner timely responded. On July 24, 2013, the director issued a second RFE that, among other things, the petitioner had a qualifying relationship with her stepfather and corresponding eligibility for immediate relative classification. The petitioner timely responded to the second RFE. On January 30, 2014, the director issued a third RFE that the petitioner's late-filing of the petition was related to her stepfather's abuse. The petitioner provided a response, which the director found insufficient on these same grounds. The director denied the petition and the petitioner timely appealed.

¹ Name withheld to protect the individual's identity.

We review these proceedings de novo. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner submitted a marriage certificate for her mother and L-Y-, who were married on [REDACTED] when the petitioner was 11 years old. There is no evidence that they divorced. The petitioner also submitted a copy of the divorce judgment from her mother's prior marriage, as well as a copy of L-Y-'s New York birth certificate. Accordingly, the petitioner has established that as of the day before she turned 21 (October [REDACTED]), she met the definition of a child at section 101(b)(1)(B) of the Act. She consequently had a qualifying parent-child relationship with L-Y- 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.

The Abuse was Not One Central Reason for the Filing Delay

Although the petitioner has established that she had a qualifying relationship and was eligible for immediate relative classification, the petitioner has not demonstrated that L-Y-'s abuse was at least one central reason for her failure to file her self-petition before her twenty-first birthday, as required of self-petitioners who file between the ages of 21 and 25 years of age at section 204(a)(1)(D)(v) of the Act. The petitioner indicated on the Form I-360 self-petition that she lived with her U.S. citizen stepfather from 1990 until 2008, and that their last shared address was on [REDACTED] New York. The petitioner did not provide an affidavit with the initial filing. She included a copy of a Form I-797C notice from legacy Immigration and Naturalization Service showing that the agency approved a Form I-130, Immigrant Petition for Relative, filed by L-Y- on her behalf with a priority date of August 29, 2001. The petitioner also submitted other evidence, but nothing dispositive of the reason for the late-filing of her self-petition.

In the third RFE, the director requested that the petitioner submit evidence to demonstrate that L-Y-'s abuse was at least one central reason for her delay in filing. The petitioner provided a statement in which she indicated that she had always lived with her mother and step-father. In a separate letter, she indicated that she was "deferring to her mother's application for VAWA benefits in order to respond to [the director's] concerns why there was a delay in filing a petition." As supporting evidence, she provided a copy of her mother's affidavit attesting to the abuse to which L-Y- subjected her mother and a copy of her mother's psychological evaluation. The petitioner did not assert or provide evidence to show that her stepfather's abuse was a central reason for her filing delay.

On appeal, the petitioner asserts that the petitioner had a qualifying relationship as the child of an abusive stepfather because she is the beneficiary of an approved Form I-130 petition with a priority date of August 29, 2001. She also asserts that she "gave a reason why the I-360 was not filed before age 21 [and] had no control over the filing," but does not cite to that reason. The petitioner ceased to live with L-Y- in 2008, when she was still 20 years old. In this case, the

petitioner must still demonstrate that she meets the eligibility requirements under section 204(a)(1)(A)(iv) of the Act, including establishing a qualifying relationship with her stepfather as of the day before she turned 21 years old. Although U.S. Citizenship and Immigration Services (USCIS) may transfer the priority date of a previously filed immigrant visa petition to a subsequent self-petition in certain instances, the petitioner did not cite any statute, regulation or case law that gives USCIS the authority to approve an otherwise unapprovable Form I-360 self-petition simply because the priority date of a prior Form I-130 petition has transferred. *Cf.* 8 C.F.R. § 204.2(h)(2).

To establish eligibility for the late-filing provision at section 204(a)(1)(D)(v) of the Act, a petitioner need not show that the abuse was the only cause for the delay. Rather, the petitioner must establish that a stepparent'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.

Here, the petitioner has not explained either below or on appeal why she was unable to file her petition before her twenty-first birthday and she did not discuss any abuse or enduring effects of the abuse that contributed to her filing delay. In her initial declaration below, the petitioner attested that she had always lived with L-Y-. According to the petitioner, she ceased living with L-Y- in 2008 when she was 20 years old and did not file her Form I-360 self-petition until December 13, 2011, when she was 23 years old. As the petitioner has not demonstrated that L-Y-'s abuse was at least one central reason for her filing delay she is ineligible for the late-filing exception at section 204(a)(1)(D)(v) of the Act.

Conclusion

The petitioner established that she had a qualifying relationship with her stepfather and was eligible for immediate relative classification based on such a relationship as of the day before her twenty-first birthday. However, she did not demonstrate that her stepfather's abuse was at least one central reason for the delay in filing her self-petition until she was 23 years old. 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 burden is on the petitioner to establish eligibility for the immigration benefit sought. 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, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.