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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 0 1 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:

PETITION: Petition for Immigrant Abused Child Pursuant to Section 204(a)(1)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)

ON BEHALF OF PETITIONER:

Enclosed is the non-precedent 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 located 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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (the director) denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reconsider. The motion will be denied and the appeal will remain dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien child battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish a qualifying relationship and eligibility for immigrant classification based on this qualifying relationship. The director further determined that the petitioner did not establish his good moral character. On appeal, the petitioner established his good moral character but did not overcome the remaining grounds of the denial. On motion, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(iii) of the Act provides:

> An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification as under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien 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 permanent resident parent.

In 2005, Congress amended the self-petitioning provisions for abused children to extend eligibility to individuals who failed to file before turning 21 due to the abuse. Section 204(a)(1)(D)(v) of the Act 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 further states, in pertinent part:

> 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 further explicated in the regulation at 8 C.F.R. § 204.2(e)(1), which states, in pertinent part:

> (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she: (A) Is the child of a citizen or lawful permanent resident of the United States; (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. . . .

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(iii) 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 . . . (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 of either parent, if any; (C) A legitimated self-petitioning child and an abusive biological father is the child's birth certificate issued by civil authorities, and evidence of the child's legitimation; (D) A self-petitioning child who was born out of wedlock and an abusive biological father is the child's birth certificate issued by civil authorities showing the father's name, and evidence that a bona fide parent-child relationship has been established between the child and the parent . . . .

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who was born on 1991. The petitioner states that he entered the United States with his parents in January of 1992 without inspection, admission, or parole. The petitioner's father, J-C-[1], was a U.S. lawful permanent resident. On 2008, when the petitioner was 17 years old, J-C- shot and killed H-I-[2], the petitioner's mother, before then killing himself. The petitioner filed the instant Form I-360 self-petition on 2012, two days after he turned 21 years old. The director denied the self-petition. On appeal, the petitioner

[1] Name withheld to protect the individual's identity.

[2] Name withheld to protect the individual's identity.

established his good moral character but did not establish his qualifying relationship and corresponding eligibility for immigrant classification. As such, he also did not establish eligibility for the late-filing exception at section 204(a)(1)(D)(v) of the Act. We dismissed his appeal on October 9, 2014, and the petitioner submitted this motion to reconsider.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and the new evidence submitted on motion fail to overcome the grounds for denial. The motion will be denied and the AAO's prior decision will be affirmed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

Because the petitioner was already 21 years old when he filed his self-petition, he must show that he had a qualifying parent-child relationship with his father as of 2012, the day before his twenty-first birthday to retain eligibility for immigrant classification under section 204(a)(1)(B)(iii) of the Act. *See* Section 204(a)(1)(D)(v) of the Act, 8 U.S.C. § 1154(a)(1)(D)(v). Unfortunately, on that date, petitioner's father had been deceased for nearly four years. In our decision dated October 9, 2014, we determined that consequently, the petitioner did not have a qualifying parent-child relationship with his father and was ineligible for preference immigrant classification based on such a relationship. We further determined that the petitioner also lacked a qualifying relationship with his father as of the date before his twenty-first birthday because his father lost his lawful permanent resident status upon his death, more than two years before this self-petition was filed. To remain eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act, an abused child whose parent lost immigrant status must show that the loss of status occurred within the past two years and was due to an incident of domestic violence. *See* 8 U.S.C. § 1154(a)(1)(B)(iii). Although the record indicates that the petitioner's father's death and resultant loss of immigrant status was due to a tragic incident of domestic violence, more than two years elapsed before this self-petition was filed. Our October 9, 2014, decision is incorporated here.

On motion, the petitioner asserts that: (1) he meets the definition of qualifying child; (2) J-C-'s lawful permanent resident status did not terminate upon his death; and (3) even if J-C-'s status terminated at the time of his death, the petitioner nonetheless had a qualifying parent-child relationship with J-C- as of the day before his twenty-first birthday and is eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act. Despite these assertions, the language of the statute is clear. The self-petitioner must be "[a]n alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence." *See* 8 U.S.C. § 1154(a)(1)(B)(iii). The petitioner claims that the statute refers to the loss of lawful permanent resident status as conducted in removal proceedings. He states that since J-C-'s lawful permanent resident status was never terminated in removal proceedings, J-C- remained a lawful permanent resident upon his death and four years after his death when the petitioner filed his self-petition. The petitioner does not, however, cite to any binding precedent decisions or other legal authority to support the conclusion that J-C-'s lawful permanent resident status was maintained beyond the statutory two year period after J-C-'s death. Instead, the petitioner incorrectly cites to section of 204(l)(2)(F) of the Act which refers to an alien who, "immediately prior to the death of his or her qualifying relative, was…a child of an alien

who filed a pending or approved petition for classification…as a VAWA [Violence Against Women Act] self-petitioner…." Here, the petitioner filed his self-petition as a VAWA minor and not as the derivative of a parent's self-petition.

Upon a full review of all the relevant and credible evidence submitted below and on motion, the petitioner has not demonstrated that he had a qualifying parent-child relationship with his father as of the date before his twenty-first birthday due to J-C-'s death when the petitioner was seventeen years old. The petitioner's self-petition was not filed within two years of his father's loss of lawful permanent resident status. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act.

The Abuse was One Central Reason for the Filing Delay

In our October 9, 2014, decision, we determined that although the petitioner demonstrated that the delay in filing his Form I-360 self-petition was related to J-C-'s abuse, he did not establish his eligibility under section 204(a)(1)(B)(iii) of the Act. The petitioner has not overcome this ground for denial and as such, he remains ineligible for the late-filing exception at section 204(a)(1)(D)(v) of the Act.

Conclusion

The petitioner has not shown that he had a qualifying parent-child relationship and was eligible for preference immigrant classification based on that relationship as of the day before his 21st birthday. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act.

In these proceedings, the petitioner bears the burden to establish his eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will remain dismissed and the self-petition will remain denied.

ORDER: The motion is denied. The October 9, 2014, decision of the Administrative Appeals Office is affirmed and the petition remains denied.