



U.S. Citizenship
and Immigration
Services

(b)(6)



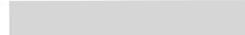
Date:

JUN 30 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded to the director.

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

The director denied the petition, finding that the petitioner did not establish that he had a qualifying parent-child relationship with a lawful permanent resident of the United States on the date the petition was filed and the corresponding eligibility for preference immigrant classification. The director further stated that the record did not establish the petitioner's good moral character; but did not articulate a basis for this conclusion or deny the petition on this ground. The petitioner timely appealed.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law and Regulations

Section 204(a)(1)(B)(iii) of the Act provides, in part, that an alien who is the child of a lawful permanent resident of the United States, and who is a person of good moral character, who is eligible for classification as an immigrant under section 203(a)(2)(A) of the Act and who resides, or has resided in the past, with the lawful permanent resident parent may file a petition with the [Secretary of Homeland Security] under this subparagraph for classification of the alien under such section if he demonstrates to the [Secretary of Homeland Security] that he has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

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

Section 204(a)(1)(D)(v) of the Act provides a late-filing waiver for individuals meeting the following requirements:

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. . . .

Pertinent Facts and Procedural History

The petitioner, a native and citizen of Mexico, was born on [REDACTED] and indicates that he first entered the United States in 1988 without inspection, admission or parole. On November 7, 2012, the petitioner filed the instant Form I-360 self-petition as the child of an abusive parent. The director determined that the petitioner was not a child, as defined at section 101(b)(1) of the Act, based on an erroneous finding that the petitioner had not filed the petition prior to his twenty-fifth birthday; and thus, pursuant to section 204(a)(1)(D)(v) of the Act, was ineligible for a late-filing waiver.

On appeal, the petitioner disputes the director's erroneous finding concerning his age, as the petitioner was 24 years old when he filed the instant Form I-360 self-petition. The petitioner contends that the director further erred in not setting forth any reasons for finding that he lacked good moral character.

We conduct appellate review of these proceedings *de novo*. A full review of the record establishes that the petitioner was 24 years old when he filed the Form I-360 self-petition as the child of an abusive parent. As the director's decision is erroneous, it will be withdrawn and the matter will be remanded for entry of a new decision.

The Form I-360 Self-Petition

The director did not properly determine below whether the petitioner meets the definition of a child born in wedlock, a legitimated child or a natural child of his parent under the provisions of section 101(b)(1)(B) of the Act, is eligible for a late-filing waiver pursuant to section 204(a)(1)(D)(v) of the Act, and is otherwise eligible for immigrant classification as the abused child of a lawful permanent resident of the United States under section 204(a)(1)(B)(iii) of the Act. Nor did the director set forth any basis for finding that the petitioner lacked good moral character as defined under the Act and regulations. As such, we will remand the proceedings for the director to determine whether the petitioner is eligible for immigrant classification under the provisions of section 204(a)(1)(B)(iii) of the Act.¹

¹ On October 1, 2014, the director approved the petitioner's Form I-918U petition under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity, and waived the grounds of inadmissibility under section 212(d)(14) of the Act. As explained in the preamble to the U nonimmigrant visa interim rule:

Aliens seeking U nonimmigrant status are free to seek any other immigration benefit or status for which they are eligible. . . . However, [United States Citizenship and Immigration Services (USCIS)] will only grant one nonimmigrant or immigrant status at a time. Where multiple applications or petitions are filed and pending at the same time, USCIS will grant the status for the application or petition that is approved first. USCIS will deny any remaining petitions or applications for status.

72 Fed. Reg. 53014, 53023 (Sept. 17, 2007). Upon her review of the remanded Form I-360 self-petition, the director should consider section 204(p)(5) of the Act, 8 U.S.C. § 1184(p)(5) as explained in the preamble.

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NON-PRECEDENT DECISION

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ORDER: The director's November 28, 2014 decision is withdrawn and the matter is remanded for issuance of a new decision.