



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

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

MATTER OF I-G-A-

DATE: OCT. 20, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks immigrant classification as an abused child of a lawful permanent resident (LPR). See section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition based on a finding that the Petitioner did not establish that she had a qualifying relationship with an LPR parent, that she was eligible for corresponding immigrant classification under section 203(b)(2)(A) of the Act, and that she was battered or subjected to extreme cruelty by an LPR parent. The Director also noted that the Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, after reaching 21 years of age, and found that the Petitioner did not establish that battery or extreme cruelty was at least one central reason for her delay in filing. On appeal, the Petitioner submits a brief.

I. APPLICABLE LAW

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part, the following:

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 last 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 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.

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), provides, in pertinent part, the following definition of a child:

[A]n unmarried person under 21 years of age who is . . .

- (A) a child born in wedlock;
- (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;
- (C) a child legitimated under the law of the child's residence or domicile

In 2005, Congress amended the self-petitioning provisions for abused children to extend eligibility to individuals who did not file a Form I-360 before turning 21 due to the abuse. Section 204(a)(1)(D)(v) of the Act states, in pertinent part:

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 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:

- (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;

.....

- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent

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 . . . 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:

- (A) The self-petitioning child and an abusive biological mother is the self-petitioner's birth certificate issued by civil authorities;

. . . .

- (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

. . . .

(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.

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II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, who was born in Mexico on [REDACTED] claims to have last entered the United States in 2000 without inspection, admission, or parole. She filed the Form I-360 on November 19, 2012, at the age of 23, alleging that she was abused by her LPR parent, J-E-G-.¹ The Director issued a request for evidence (RFE) that the Petitioner had a qualifying relationship with an abusive LPR parent. The Director noted that, although the Petitioner's birth certificate listed J-E-G- as the Petitioner's biological mother, the Petitioner stated in her personal declaration that J-E-G-'s partner, B-C-,² was the Petitioner's "real mother" and J-E-G- was her stepmother. The Director requested evidence that B-C- was the Petitioner's biological mother and that J-E-G- and B-C- married before the Petitioner turned 18. Additionally, the Director requested evidence of a connection between the claimed abuse and the Petitioner's delay in filing the Form I-360 until after she reached 21 years of age. The Petitioner responded to the RFE with a personal declaration. The Director found the evidence insufficient to establish that the Petitioner had a qualifying relationship with an abusive LPR parent and that the Petitioner's delay in filing the Form I-360 was connected to abuse by an LPR parent.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not overcome the Director's decision to deny the petition. Therefore, we will dismiss the appeal.

III. QUALIFYING RELATIONSHIP

The evidence does not establish that the Petitioner has a qualifying relationship with an LPR parent. The Petitioner submitted a copy of her birth certificate, which states that J-E-G- is the Petitioner's mother. However, the Petitioner stated in two personal declarations, submitted with the Form I-360 and in response to the RFE, that J-E-G- is not her biological mother despite the fact that she is listed as the mother on the Petitioner's birth certificate. Instead, the Petitioner claimed in both declarations, B-C- is the Petitioner's biological mother. In her 2012 declaration, the Petitioner referred to J-E-G- as her "so called 'step mom'" and to B-C- as her "real mom." She stated that J-E-G- removed the names of B-C- and the Petitioner's father from the Petitioner's birth certificate in order to register the Petitioner for school. In her 2013 declaration, the Petitioner referred to J-E-G- as her mother and stated that she called both J-E-G- and B-C- "mom." However, she also claimed that B-C- told the Petitioner that B-C- was her "real mom." The Petitioner noted that she sought explanations for the discrepancy between her birth certificate and the statements of B-C- regarding the identity of her biological mother, but B-C- and J-E-G- "would never explain why it was that way." In her brief on appeal, the Petitioner argues that her statement regarding the identity of her mother "is a depiction of the bizarre circumstances she was forced to endure as a child and adolescent. It is not a conclusion of biological fact." However, the Petitioner's repeated statements on this issue, in both of her declarations, call into question the authenticity and accuracy of her birth

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

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certificate as well as the true identity of her biological mother. Without further evidence to clarify this discrepancy, we cannot find that the Petitioner is the biological child of J-E-G-. The Petitioner also argues on appeal that the birth certificate of J-E-G- is evidence that J-E-G- is the Petitioner's mother. The Petitioner does not explain how J-E-G-'s birth certificate, which documents only the birth and identity of J-E-G-, is relevant to the question of whether the Petitioner's birth certificate is genuine or reflects true information.

Other evidence in the record contributes to the confusion regarding the identity of the Petitioner's biological mother. School documentation for the Petitioner, including her Health Record and a verification of enrollment at [REDACTED] Middle School, list J-E-G- as the Petitioner's parent. The Petitioner's Cumulative Record for Junior and Senior High Schools states that J-E-G- is the Petitioner's mother. However, an Emergency Response Referral Information form from the [REDACTED] dated September 16, 2002, lists B-C- as the birth mother of the Petitioner and the Petitioner's brother, [REDACTED] and J-E-G- as their adoptive mother. The accompanying Screener Narrative again states that J-E-G- is the adoptive mother of the Petitioner and [REDACTED] while the Investigation Narrative provides the opposite information, stating that J-E-G- is the birth mother and that B-C- is her partner. An Emergency Response Referral Information form for another incident, dated December 18, 2002, creates further confusion, listing J-E-G- as the adoptive mother of the Petitioner and [REDACTED] and stating that B-C- has "No Relation" to the children. A third Emergency Response Referral Information form, dated July 31, 2003, again lists J-E-G- as the adoptive mother, but does not list B-C- as a person living in the home. Although this evidence supports the Petitioner's assertion that she has received confusing and conflicting information regarding the identity of her biological mother, it does not support her claim on appeal that she is the biological child of J-E-G-.

Supporting declarations from friends, submitted with the Form I-360, also contain conflicting information regarding the identity of the Petitioner's mother. [REDACTED] stated that B-C- told her that B-C- is the Petitioner's biological mother. [REDACTED] indicated that, according to B-C-'s report, when the Petitioner's birth was registered in Mexico, J-E-G- was listed as her mother on the birth certificate. In his declaration, [REDACTED] the father of the Petitioner's daughter, referred to both J-E-G- and B-C- as the Petitioner's "mothers." By contrast, [REDACTED], the Petitioner's ex-boyfriend, referred to J-E-G- as the Petitioner's "stepmother" and to B-C- as her "real mom." The record contains unresolved inconsistencies regarding the identity of the Petitioner's biological mother, and the preponderance of the evidence does not demonstrate that the Petitioner has a qualifying relationship with J-E-G-.

Although section 101(b)(1) of the Act also includes stepchildren in the definition of "child," the evidence does not demonstrate that the Petitioner is a stepchild of J-E-G- because J-E-G- and B-C- did not marry. Section 101(b)(1)(B) of the Act. Therefore, the evidence does not establish that the Petitioner has a qualifying relationship with an LPR parent as required by section 204(a)(1)(B)(iii) of the Act.

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IV. BATTERY OR EXTREME CRUELTY

The preponderance of the evidence demonstrates that the Petitioner was subjected to extreme cruelty by J-E-G-. In her 2012 declaration, the Petitioner described a childhood characterized by trauma and instability in which she experienced emotional abuse by J-E-G-; witnessed the physical abuse of her sister, brother, and B-C- by J-E-G-; witnessed suicide attempts by her sister and J-E-G-; was present during violent arguments by her parents, some of which involved breaking of household items, use of weapons, and threats of violence or suicide; was frequently forced to move due to instability within her family and was sometimes placed in the care of other abusive adults; was forced to pay rent to maintain the home she shared with J-E-G-, who did not contribute financially to the household; and was pressured to give her income to J-E-G-, who promised to return the money later but did not do so. The Petitioner also stated that J-E-G- frequently locked her and [REDACTED] out of the bathroom in their shared home, refusing to allow them access to toilet and shower facilities for hours at a time. The Petitioner also asserted that J-E-G- eventually kicked her out of the house, but attempted to forcibly remove the Petitioner's infant daughter from the Petitioner's arms as the Petitioner left. In her 2013 declaration, the Petitioner alleged that "all [her] life [she] was controlled by [her] mother [J-E-G-]." The Petitioner stated that she "could never count on" J-E-G-, who "was always mad."

The supporting statements from the Petitioner's friends also indicate that the Petitioner grew up in an abusive environment. [REDACTED] who owned the apartment that J-E-G- and B-C- rented, stated that she had known J-E-G- and B-C- "to be extremely violent to one another and to [the Petitioner] and [REDACTED]." According to [REDACTED] the household "was not a safe environment for a child to live in." She further stated that J-E-G- tried to forcibly remove the Petitioner's infant daughter from the Petitioner's arms, and later attempted to obtain custody of the Petitioner's daughter without cause. [REDACTED] indicated that, according to the Petitioner, "living with her mother was a hell." [REDACTED] claimed that J-E-G- attempted to control the Petitioner, yelled at the Petitioner, broke the window of [REDACTED] vehicle with a rock during a violent encounter, and told the Petitioner that she hoped her baby would die. The Petitioner's ex-boyfriend, [REDACTED] stated that J-E-G- seemed "cruel" and that the Petitioner used to call him while J-E-G- and B-C- were having violent arguments in the house. [REDACTED] claimed that J-E-G- sometimes threatened to call immigration authorities if the Petitioner left the house, did not give her a key to the house despite the fact that the Petitioner paid the rent, would not allow her to enter the house on at least one occasion, and took the Petitioner's income. According to [REDACTED] although J-E-G- did not physically abuse the Petitioner, the Petitioner "was mistreated verbally [and] . . . psychologically." The Petitioner's friend [REDACTED] confirmed that J-E-G- kicked the Petitioner out of the house but attempted to force her to leave without her infant daughter, and threatened to report her to immigration authorities as a means of obtaining custody of the Petitioner's daughter.

Although the documentation from the [REDACTED] [REDACTED] mainly indicates that reports of physical and emotional abuse against the Petitioner by J-E-G- were unfounded, those reports largely focused on issues relating to the Petitioner's sister and do not reflect a detailed investigation regarding the Petitioner. Additionally, the Petitioner has provided detailed, credible personal declarations documenting the environment of

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trauma, instability, and abuse in which she grew up. She has also submitted detailed, credible supporting declarations from friends. The preponderance of the evidence in this case indicates that the Petitioner was subjected to a pattern of behavior amounting to extreme cruelty by J-E-G-.

V. CONNECTION BETWEEN ABUSE AND FILING DELAY

The Petitioner has not demonstrated that the extreme cruelty she suffered was at least one central reason for her delay in filing the Form I-360. On appeal, she claims that J-E-G- and B-C- “intentionally misled, deceived, and confused [the Petitioner] concerning the identity of her mother, her nationality, and her lawful status.” She further contends that she may have obtained lawful status prior to turning 21 if she had not been “raised by two manipulative, emotionally cruel women,” and that she was unaware of available immigration benefits until she retained counsel.

According to the Petitioner’s 2012 declaration, she first entered the United States in 1997 but does not remember how she entered. She stated that she and [REDACTED] returned to Mexico approximately one year later to live with a relative, where they remained for a year and a half until J-E-G- brought them back to California. The Petitioner recounted that J-E-G- told her and [REDACTED] to memorize different names and birthdates prior to crossing the border from Mexico to California by car. She also claimed that the family later moved to Texas and that she and [REDACTED] were told they would have to hide under bus seats while passing through an immigration checkpoint. The Petitioner stated, “[J-E-G-] had always told us and tried to scare us and would say that we always had to be careful because if immigration were [to] get us we would be sent back straight to Mexico” She alleged that she and [REDACTED] were not discovered at the immigration checkpoint and they proceeded to the home of J-E-G-’s sister, where they resided for approximately two years. The Petitioner indicated that she left that home “as soon as [she] turned 18” because it was an abusive situation. The Petitioner reported that she was later detained by immigration authorities on August 25, 2010.

In her 2013 declaration, the Petitioner claimed that she “did not have any knowledge that [she] was an immigrant” when she was a child. The Petitioner stated that J-E-G- did not discuss the issue with her, she had no problems traveling to California by airplane, and the California public schools did not require her to submit paperwork other than a birth certificate. According to the Petitioner, J-E-G- told her that she lacked documentation to live legally in the United States when the family moved to Texas. The Petitioner recalled that, at that time, J-E-G- told her and [REDACTED] that they would be deported to Mexico if the Border Patrol caught them. The Petitioner stated that J-E-G- forced the Petitioner and Pedro to hide in the vehicle during a portion of the drive from California to Texas. She recounted that they passed through an immigration checkpoint without being discovered, but that she remained worried about her immigration status when she began her junior year of high school in Texas. Furthermore, the Petitioner alleged that she was unaware of her eligibility to file a Form I-360 until Pedro spoke with an immigration attorney. According to the Petitioner, she then met with the attorney as well and realized that she “had a chance to be free from [her] mother.”

Although the Petitioner claims that she did not have the opportunity to file an immigration petition prior to turning 21 because J-E-G- did not tell her about her immigration status, the record does not support

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her claim. When the Petitioner was placed into immigration detention on [REDACTED], 2010, she was [REDACTED] years, [REDACTED] months, and [REDACTED] days old. Although it may have been difficult for her to file a Form I-360 between the date of her detention and the date she turned 21, the record indicates that the Petitioner was aware of her immigration status for at least several years prior to her detention. The Petitioner's 2012 declaration indicates that she was aware that she lacked authorization to reside legally in the United States since at least age [REDACTED] when she hid under a seat in a bus in order to pass through an immigration checkpoint. Although the Petitioner did not provide the specific date of this incident, she stated that she went from the checkpoint to the home of J-E-G-'s sister, where she resided "for about 2 years" until she turned [REDACTED] years old. Additionally, the Petitioner suggested in her declaration that she was aware of her immigration status even prior to the incident at the checkpoint. She stated that she was required to memorize a different name and birthdate to cross the border from Mexico to California as a child, and that, in an effort to scare the Petitioner and [REDACTED], J-E-G- "had always told" them that they would be deported if immigration authorities found them. Furthermore, the Petitioner and her friends stated in their declarations that J-E-G- threatened to report the Petitioner to immigration authorities if she did not obey J-E-G-'s demands. Therefore, the Petitioner's claims that J-E-G- kept her uninformed of her immigration status, and that she therefore could not file the Form I-360 prior to turning 21, is not supported by the record. To the contrary, the record indicates that J-E-G- mentioned the Petitioner's immigration status when the Petitioner was a child and that the Petitioner became concerned about her immigration status by age [REDACTED] when she hid in a vehicle during a border checkpoint. However, she did not file the Form I-360 until November 11, 2012, at the age of 23.

Finally, although the Petitioner claims that she was unaware of the possibility of filing a Form I-360 until she retained counsel, there is no evidence that her lack of knowledge regarding available immigration benefits was due to the abuse she suffered. Furthermore, the Petitioner did not provide the date on which she retained counsel, but the record indicates that current counsel represented her in immigration court proceedings on or before July 11, 2011, when the Petitioner was 21. The fact that she then waited over a year to file the Form I-360 after retaining counsel calls into question her assertion that she would have filed her petition earlier if she had been aware of its availability.

The Petitioner has not demonstrated that abuse was at least one central reason for her delay in filing the Form I-360. Consequently, she is ineligible for immigrant classification as the abused child of a lawful permanent resident under section 204(a)(1)(B)(iii) of the Act.

VI. CONCLUSION

The evidence does not establish by a preponderance of the evidence that the Petitioner has a qualifying relationship with an LPR parent. Additionally, the Petitioner has not demonstrated that abuse by an LPR parent was at least one central reason for her delay in filing the Form I-360. Therefore, the Petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013);

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Matter of Chawathe, 25 I&N Dec. 369. Here, the Petitioner has not met that burden. Accordingly the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of I-G-A-*, ID# 14432 (AAO Oct. 20, 2015)