



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

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

MATTER OF O-O-S-

DATE: OCT. 12, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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. Under the Violence Against Women Act (VAWA), an abused child may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, concluding that the Petitioner did not demonstrate a qualifying relationship to her U.S. citizen stepfather and is therefore is not able to demonstrate she is eligible for immigrant classification under Section 204(a)(1)(A)(vi).

The matter is now before us on appeal. On appeal, the Petitioner submits a brief.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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

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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)(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 requirements 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:

(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 . . . (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

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner, a citizen of the United Kingdom, was born on [REDACTED]. She last entered the United States in July 2014, with a B2 nonimmigrant visa. On [REDACTED] 2013, the Petitioner's biological

mother married A-A-¹, a U.S. citizen, when the Petitioner was 20 years old. The Petitioner's stepfather filed a Form I-130, Petition for Alien Relative on the Petitioner's behalf, which he subsequently withdrew. The Petitioner's mother filed a VAWA petition which included only her two minor children, as the Petitioner was already 21 years old. The Petitioner's mother's VAWA petition was approved. The Petitioner filed the instant Form I-360 on August 18, 2015, when she was 21 years of age. The Director denied the VAWA petition and the Petitioner timely appealed. We have reviewed all of the evidence in the record of proceedings.

III. ANALYSIS

A. Qualifying Relationship

The Director correctly determined that the Petitioner had not established that she had a qualifying relationship with A-A- because the Petitioner did not meet the statutory definition of "child" under section 101(b)(1) of the Act. Section 101(b)(1) of the Act includes within the definition of "child," a stepchild, *provided* the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred. Section 101(b)(1)(B) of the Act; 8 U.S.C. § 101(b)(1)(B). Since the Petitioner was 20 years old when the stepparent/stepchild relationship was created between her and A-A-, she did not qualify as his "child" under section 101(b)(1) of the Act.

On appeal, the Petitioner asserts that she falls within the parameters of section 204(a)(1)(D)(v) of the Act, which extends eligibility to individuals who failed to file a VAWA petition before turning 21 when the parent's abuse is at least one central reason for the filing delay. However, section 204(a)(1)(D)(v) of the Act states that it only applies to individuals who qualified to file a VAWA petition under section 204(a)(1)(A)(iv) of the Act. Section 204(a)(1)(A)(iv) of the Act provides that it applies only to "the child of a citizen of the United States." Here, the Petitioner never qualified as A-A-'s "child" as defined under section 101(b)(1) of the Act. Because the Petitioner was not qualified to file a petition under section 204(a)(1)(A)(iv) of the Act, the exception at 204(a)(1)(D)(v) of the Act does not apply.

The Petitioner further contends that her delay in filing the self-petition was the direct result of the abuse that she suffered at the hands of her stepfather. A full review of the record establishes that the Petitioner's former stepfather subjected her to abuse during the time that he was married to the Petitioner's mother. The statements of the Petitioner and her mother recount in probative detail several incidents of the Petitioner's former stepfather's physical and verbal abuse of the Petitioner, her siblings and her mother, including incidents which occurred in the presence of the Petitioner or were also directed at the Petitioner. Nonetheless, although the Petitioner has established a claim of battery or extreme cruelty, she has not established a qualifying relationship to her stepfather, as required by statute. Since the Petitioner is not eligible for immigrant classification based on the qualifying relationship with her stepfather, her assertion that her delay in filing is due to the abuse will not be addressed.

¹ Initials are used throughout this decision to protect the identities of the individuals.

B. Eligibility for Immigrant Classification

The Petitioner has not establish that she had a qualifying relationship as the child of a U.S. citizen as required by section 204(a)(1)(A)(iv) of the Act and the regulation at 8 C.F.R. §§ 204.2(e)(1)(ii), (e)(2)(ii). She has also not established that she was eligible for immediate relative classification based on that relationship under section 201(b)(2)(A)(i) of the Act as required by section 204(a)(1)(A)(iv) of the Act and the regulation at 8 C.F.R. § 204.2(e)(1)(i)(B).

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish 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.

ORDER: The appeal is dismissed.

Cite as *Matter of O-O-S-*, ID# 12649 (AAO Oct. 12, 2016)