



U.S. Citizenship
and Immigration
Services

[REDACTED]
C/O DALIA CASTILLO-GRANADOS
UNIVERSITY OF HOUSTON LAW CENTER IMMIGRATION CLINIC
100 LAW CENTER, ROOM 56 TU II
HOUSTON, TX 77204-6060

DATE: AUG 24 2011 Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

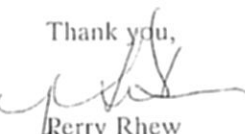
ON BEHALF OF PETITIONER:

DALIA CASTILLO-GRANADOS, ESQ.
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INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center denied the immigrant visa petition and reaffirmed the denial upon the petitioner's subsequent motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks immigrant classification under 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 determined that the petitioner had not established that his stepfather's abuse was one central reason for his failure to file his petition before his twenty-first birthday. Consequently, the director denied the petition for failure to demonstrate a qualifying relationship with a lawful permanent resident parent and corresponding eligibility for preference immigrant classification based on such a relationship.¹

On appeal, counsel submits a brief and additional evidence.

Applicable 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)(B)(iii) of the Act provides, in pertinent part, that an alien who is the child of a lawful permanent resident and who is a person of good moral character, who is eligible for classification as a preference immigrant under section 203(a)(2)(A) of the Act, and who resides, or has resided in the past, with the permanent resident alien parent may file a petition with the Attorney General (now Secretary of Homeland Security) for classification of the alien (and any child of the alien) as a preference immigrant 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 2006, Congress amended the self-petitioning provisions for abused children to extend eligibility to individuals who failed to file before turning 21 due, in part, to the parent's 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

¹ In his September 28, 2010 decision on motion, the director erroneously stated that the decision could not be appealed. The director's error has not prejudiced the petitioner, however, as the present appeal has been adjudicated and sustained.

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 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 regulation at 8 C.F.R. § 204.2(e)(2)(i) further states:

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.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, as supplemented on appeal, demonstrates that the petitioner has overcome the grounds for denial and the appeal will be sustained for the following reasons.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico who was born on September 16, 1983. He states that he moved to the United States in approximately 1989. On December 6, 1995, when the petitioner was 12 years old, his mother married his stepfather, a lawful permanent resident of the United States. The record indicates that the petitioner resided with his stepfather from 1990 until January 2001. The relevant evidence shows that the petitioner's stepfather subjected him to battery and extreme cruelty throughout their joint residence. The petitioner's mother filed a Form I-360 self-petition on September 28, 2005, when the petitioner was 22 years old. Her petition was approved on March 22, 2006.²

The petitioner filed the instant Form I-360 on his own behalf on December 10, 2007 when he was 24 years old. The director subsequently issued a request for evidence (RFE) that, *inter alia*, his stepfather's abuse was at least one central reason for the petitioner's delay in filing his Form I-360. Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that his stepfather's abuse was one central reason for his filing delay. The director denied the petition for lack of a qualifying relationship

² Receipt number [REDACTED]

and corresponding eligibility for preference immigrant classification based on such a relationship. Upon the petitioner's subsequent motion to reopen and reconsider, the director affirmed these reasons for denial. On appeal, counsel reasserts the petitioner's eligibility and claims that the director subjected the petitioner to an erroneously higher standard.

The Abuse was a Central Reason for the Filing Delay

In their statements submitted below and on appeal, the petitioner, his mother and his siblings provided a credible, detailed and probative account of the battery and extreme cruelty of the petitioner's stepfather. The relevant evidence shows that the petitioner was subjected to over a decade of physical and psychological abuse by his stepfather. In 2001, after his stepfather injured him in an assault, the petitioner called the police, his stepfather was arrested and the petitioner was granted an order of protection. The petitioner states that his stepfather was imprisoned as a result of this incident and thereafter abandoned the family.

The director determined that because the petitioner had no "further interaction with [his] stepfather, once he was removed from the home," his stepfather's abuse was not a central reason for the filing delay. However, nothing in the statutory language requires ongoing abusive contact with the lawful permanent resident parent. In addition, the late-filing provision at section 204(a)(1)(D)(v) of the Act does not mandate that the abuse be the only or predominant cause for the filing delay. Rather, to establish that a parent's abuse was "at least one central reason for the filing delay," the self-petitioner 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.

As supplemented on appeal, the record in this case demonstrates that the petitioner's stepfather's abuse was a central reason for his filing delay. In his statements submitted below and on appeal, the petitioner explained that his stepfather was the main financial provider for their family and, as part of his abusive control over the petitioner's mother, never allowed her to work outside the home, learn English or acquire any skills for gainful employment. When their stepfather abandoned the family, the petitioner, his mother and his siblings all attest to their severe economic deprivation. Without their stepfather's income, the family had to move from their house into a one-room mobile home with a leaking roof and no electricity when they could not afford the bill. As the eldest of six children, the petitioner had to drop out of school in order to work two jobs to support his family.

The relevant evidence further shows that the petitioner's stepfather used the family's lack of immigration status as a means to threaten and control them. The petitioner credibly recounts how his stepfather would threaten to withdraw their immigrant petitions or "call Immigration" to get them deported if they called the police when he hurt them. The petitioner further explains that he consequently believed that there was no way for him to gain lawful permanent resident status without his stepfather.

In her mental health evaluation of the petitioner submitted on appeal, Cynthia Hernandez, a licensed clinical social worker, diagnoses the petitioner with depressive disorder and explains

how the enduring effects of his stepfather's abuse adversely affected the petitioner and eventually forced him to focus solely on supporting his family to the exclusion of his own needs. Ms. Hernandez states that due to his stepfather's abuse, the petitioner continues to suffer from anxiety, which manifests in panic attacks, shortness of breath, rapid heart rate, sudden loss of hair, insomnia and recurrent nightmares involving violence and the petitioner's attempts to protect himself. Ms. Hernandez further explains that in reaction to his stepfather's abuse, the petitioner learned to suppress his feelings and become the head of his family's household, events which left the petitioner emotionally stunted and unable to prioritize his immigration status above the pressing needs of his family to survive.

In her April 14, 2010 affidavit, the petitioner's mother reiterates how her husband made their family dependent on him and instilled fear in her, the petitioner and her other children by making them believe they had no rights to ask for assistance because they lacked immigration status. The petitioner's mother describes in probative detail the family's destitution upon her husband's abandonment. She also explains how the petitioner took on all of the family's responsibilities although he was only 17 years old and how he "put all of [their] needs first and never thought of himself." In their letters submitted below and on appeal, the petitioner's younger siblings also attest to the abuse the petitioner endured at the hands of his stepfather, often as result of defending them, and how the petitioner put aside his personal goals to become the main provider and protector of their family. Accordingly, the record shows that the abuse and its enduring effects significantly contributed to the petitioner's filing delay.

In his January 20, 2010 statement, the petitioner explained: "I was scared of my illegal immigration status, but I neither knew nor could have found any legal help. Filing an application like the one my lawyer helped me do now, was not something that I knew I could do at that time. My only concern was survival." The director concluded that the petitioner's unawareness of the self-petitioning provisions was "not a qualifying central reason for the delay in filing the I-360 prior to [him] reaching age 21." The director's conclusion overlooks pertinent evidence and the date of the statutory amendment creating the late-filing provision. First, the relevant evidence indicates that it was not the petitioner's mere ignorance of the law that caused his filing delay, but his stepfather's threats of deportation and use of the petitioner's lack of immigration status as a means to control him, which caused the petitioner to believe that he would never be eligible for lawful permanent residency without his stepfather's support. Second, the late-filing provision was not enacted and available to sons and daughters of lawful permanent residents until August 12, 2006, when the petitioner was nearly 23 years old.³ Hence, it was not simply the petitioner's ignorance of the law, but the law's nonexistence and his stepfather's abuse, which prevented the petitioner from filing prior to his twenty-first birthday.⁴

³ The late-filing provision was initially enacted by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006), but only provided relief for sons and daughters of citizens. The late-filing provisions were later extended to sons and daughters of lawful permanent residents by the Technical Corrections to VAWA 2005, Pub. L. No. 109-271, 120 Stat. 750 (Aug. 12, 2006).

⁴ The statements of counsel and the petitioner indicate that the petition was timely filed after the law passed and counsel agreed to represent the petitioner.

The relevant evidence submitted below and on appeal demonstrates that as of the day before his twenty-first birthday, the petitioner met all the requirements of subsection 204(a)(1)(B)(iii) of the Act and that his stepfather's abuse was at least one central reason for his filing delay, as required by section 204(a)(1)(D)(v) of the Act. The director's determination to the contrary is hereby withdrawn.

Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification

The record shows that prior to his twenty-first birthday, the petitioner had a qualifying relationship with his lawful permanent resident stepfather and was eligible for preference immigrant classification based on their relationship under section 203(a)(2)(A) of the Act, as required by section 204(a)(1)(B)(iii) of the Act. The director's contrary determination is withdrawn.

Conclusion

Although this Form I-360 was filed when the petitioner was 24 years old, the petitioner has established on appeal that as of the day before his twenty-first birthday, he met all the requirements for a child's self-petition at section 204(a)(1)(B)(iii) of the Act and that his stepfather's abuse was at least one central reason for his filing delay. Accordingly, the petitioner remains eligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met his burden, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.