U.S. Citizenship and Immigration Services

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

In Re: 35262242

Date: FEB. 18, 2025

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Child of U.S. Citizen)

The Petitioner seeks immigrant classification as an abused child of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv). 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 of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish a qualifying relationship to a U.S. citizen step-parent, as required, because he was over 18 years of age at the time his biological mother married his U.S. citizen step-father. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## I. LAW

A petitioner may be eligible for immigrant classification under VAWA as the "child" of a U.S. citizen if they demonstrate, among other requirements, that the U.S. citizen parent subjected them to battery or extreme cruelty. Section 204(a)(1)(A)(iv) of the Act. "Child" is defined, as relevant here, as an unmarried person under 21 years of age who is "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 101(b)(1)(B) of the Act. If the petitioner does not file the VAWA petition before attaining 21 years of age, the VAWA petition shall nonetheless be treated as having been filed before such time if the petitioner files the VAWA petition before attaining 25 years of age and demonstrates that the abuse was at least one central reason for the delay in filing. Section 204(a)(1)(D)(v) of the Act.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

## II. ANALYSIS

In this case, the Petitioner, a citizen of El Salvador, indicated on his VAWA petition that he is the stepchild of an abusive U.S. citizen. The record indicates that his mother, B-M-,[1] married P-B-, a naturalized U.S. citizen, in September 2016, when the Petitioner was 18 years old.

In denying the petition, the Director determined that the record clearly demonstrates the Petitioner was over the age of 18 at the time his mother married his U.S. citizen stepfather, and as such, he cannot be considered a stepchild pursuant to section 101(b)(1)(B) of the Act.[2]

On appeal, the Petitioner does not contest that he was 18 years old at the time his mother married his U.S. citizen stepfather. The Petitioner asserts that "there is no requirement for a derivative child of their parent's VAWA petition to have been under 18 when the parent and the USC spouse married to be eligible for approval as a derivative in a VAWA petition."

Upon de novo review, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Here, the Petitioner has not provided any evidence to overcome the Director's decision on appeal. The record clearly demonstrates, and the Petitioner does not contest, that the Petitioner was over the age of 18 when his mother married his U.S. citizen stepfather in [redacted] 2016. Thus, the Petitioner does not meet the statutory definition of a "child" pursuant to section 101(b)(1)(B) of the Act and cannot establish eligibility for the instant classification as the battered child of a U.S. citizen.[3]

Accordingly, we cannot conclude that the Petitioner has met his burden of establishing a qualifying parent-child relationship with a U.S. citizen for purposes of immigrant classification under section 204(a)(1)(A)(iv) of the Act. Because the Petitioner has not demonstrated a qualifying parent-child relationship, he also has not established that he is eligible for immediate relative classification based on such a relationship.[4] The petition will therefore remain denied.

**ORDER:** The appeal is dismissed.

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[1] We use initials to protect the privacy of individuals.

[2] The Director also acknowledged that the Petitioner filed the VAWA petition after the age of 21, but under the age of 25, and determined that the evidence in the record satisfied the late filing deficiency.

[3] The Petitioner indicates that he was listed as a derivative on his mother's Form I-360. However, as he was over the age of 21 when his mother's Form I-360 was filed, he was not eligible for derivative status as a child and on October 13, 2020, the Petitioner filed the instant Form I-360 as the self-petitioning child of an abusive stepparent. Thus, any eligibility the Petitioner may establish as a derivative is not material to his eligibility as a self-petitioner in the present matter.

[4] Since the identified basis for denial is dispositive of the Petitioner's appeal, we do not address whether the Petitioner has established eligibility under the remaining VAWA criteria at section 204(a)(1)(A)(iii) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).