UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JENNIFER ARGUIJO	)	
	)	
Plaintiff,	)	Case No. 1:13-cv-5751
	)	
v.	)	
	)	
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; JANET NAPOLITANO, Secretary of the Department of Homeland Security; ALEJANDRO MAYORKAS, Director of the United States Citizenship and Immigration Services; RON ROSENBERG, Chief, Administrative Appeals Unit; DANIEL RENAUD, Director, Vermont Service Center	)	
	)	
Defendants.	)	

COMPLAINT

NOW COMES Plaintiff Jennifer Arguijo and complains of the Defendants as follows:

NATURE OF THE ACTION

1. Plaintiff Jennifer Arguijo brings this action to challenge the denial of her I-360 self-petition pursuant to the Violence Against Women Act ("VAWA"). Defendant United States Citizenship and Immigration Services' ("USCIS") and the Defendants acting on behalf of USCIS denied Ms. Arguijo's self-petition because she did not maintain a relationship with her abusive United States citizen stepfather. Ms. Arguijo seeks a declaration that the Defendants' decision violated the Administrative Procedure Act because it was arbitrary and capricious. Ms. Arguijo also asks the Court to declare that Defendants' requirement that stepchildren maintain a relationship with an abusive stepparent to qualify for VAWA relief violates the Equal Protection guarantee of the United States Constitution. As a result of Defendants' improper acts, the Court should order Defendants to reopen and adjudicate Ms. Arguijo's I-360 self-petition.

JURISDICTION

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the Constitution, laws, or treaties of the United States. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 2201, as this is a civil action seeking, in addition to other remedies, a declaratory judgment.

3. The Administrative Procedure Act ("APA") provides a waiver of sovereign immunity as well as a cause of action. 5 U.S.C. § 702.

STANDING

4. The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. §702. Defendants' improper termination of Ms. Arguijo's I-360 petition has adversely affected Ms. Arguijo's ability to obtain legal status in the United States. Ms. Arguijo thus falls within the APA's standing provisions.

VENUE

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1), because a substantial part of the events giving rise to this claim occurred in this district, Ms. Arguijo resides in this district, and no real property is involved in this action.

PARTIES

6. Plaintiff Jennifer Arguijo is a national and citizen of Honduras, and was born on October 23, 1987. She last entered the United States on June 24, 1998, when she was only 11 years old, on a B1/B2 tourist visa to live with her mother. On June 15, 1999, Ms. Arguijo's mother married United States citizen F.M., creating a stepparent relationship between Ms. Arguijo and F.M.

7. Defendant United States Citizenship and Immigration Services is a bureau within the Department of Homeland Security ("DHS") and is responsible for the administration and

enforcement of the Immigration and Nationality Act ("INA") and all other laws relating to the immigration and naturalization of non-citizens.

8. Defendant Janet Napolitano is the Secretary of DHS. The Homeland Security Act of 2002, Pub.L.107-296, created DHS to perform the duties of the Immigration and Naturalization Service. Secretary Napolitano's responsibilities are set forth in 8 U.S.C. §§ 1103(a)(1)-(3), among which are: to administer and enforce the Immigration Act and all other laws relating to the immigration and naturalization of aliens; to control, direct and supervise all employees; to establish such regulations, issue such instructions, and perform such other acts deemed necessary for carrying out her authority; and to require any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service. Ms. Napolitano is sued in her official capacity.

9. Defendant Alejandro Mayorkas is the Director of USCIS, a position created by Section 451 of the Homeland Security Act. Pursuant to Section 451 of the Homeland Security Act, Defendant Mayorkas administers the provisions of the Immigration Act through his agents and officials of USCIS, which functions were previously performed by the Commissioner and District Directors of the Immigration and Naturalization Service. He oversees the operations of personnel of USCIS, who adjudicate visa petitions filed by or on behalf of aliens, applications for permanent residency status, and appeals from any action denying such petitions. Mr. Mayorkas is sued in his official capacity.

10. Defendant Ron Rosenberg is chief of the Administrative Appeals Unit of USCIS, which is an office authorized by 8 C.F.R. § 1003(a)(1)(iv) under the appellate jurisdiction of the

Associate Commissioner of Examinations to review actions of USCIS. Mr. Rosenberg is sued in his official capacity.

11. Defendant Daniel Renaud is the Director of the Vermont Service Center of USCIS, located in St. Albans, Vermont. He has authority to adjudicate petitions filed by abused spouses and children of United States citizens and lawful permanent resident aliens. Mr. Renaud is sued in his official capacity.

LEGAL BACKGROUND

12. On September 13, 1994, President Clinton signed the Violence Against Women Act into law as a part of a larger crime bill entitled the Violent Crime Control and Enforcement Act of 1994. VAWA provides funding and technical support, as well as important legal protections, to victims of domestic violence, sexual assault and stalking. *See* VAWA 1994, Pub. L. 103-322, Title IV, Sept. 19, 1994, *amended by* the Battered Immigrant Woman Protection Act of 2000, Pub. L. 106-386, Oct. 28, 2000, the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, Jan. 5, 2006, and the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, Mar. 7, 2013.

13. The immigrant provisions of VAWA, and the regulations promulgated to interpret and enforce those provisions, provide legal remedies that permit victims of domestic violence to legalize their status independent of their abusers. *See* 8 U.S.C. §§ 1154(a)(1)(A)(iii) and1154(a)(1)(A)(iv). VAWA was intended to protect immigrant survivors from adverse immigration consequences associated with leaving their abusive U.S. citizen or lawful permanent resident family member.

14. VAWA provides abused minors the right to self-petition for immigration benefits for which they would otherwise be dependent on the abusive parent. VAWA's definition of a

"child" includes an unmarried person under the age of 21 who is a stepchild, so long as the marriage creating the step relationship occurred prior to the child's 18th birthday. 8 U.S.C. § 1101(b)(1)(B).

15. Recognizing that threat of deportation and loss of immigration status is a powerful tool of abusers, VAWA and its amendments do not require victims of abuse to remain living with an abusive family member in order to seek relief. For example, VAWA permits an abused spouse to file a claim within two years of a divorce, and provides no time limitation at all for children, provided they are under the age of 21.

FACTUAL BACKGROUND

16. Ms. Arguijo entered the United States on June 24, 1998, when she was 11 years old, to live with her mother.

17. On June 15, 1999, Ms. Arguijo's mother married United States citizen F.M., creating a step-relationship between Ms. Arguijo and F.M. F.M. was the only father that Ms. Arguijo knew, as her biological father died of AIDS when she was a toddler.

18. Ms. Arguijo resided with her mother and stepfather for approximately four years. During this time, F.M. severely abused Ms. Arguijo, her siblings, and her mother physically, sexually, and psychologically. F.M. beat Ms. Arguijo, at times in the middle of the night, leaving marks that attracted the attention of teachers at school. He exposed himself to her and threatened to have her deported. The abuse was so severe and threatening that Ms. Arguijo felt the need to sleep with a knife under her pillow.

19. In 2003, when she was 15 years old, Ms. Arguijo ran away from her home to escape the abuse. Despite leaving home, Ms. Arguijo remained in contact with her mother and her stepfather.

20. Thereafter, Ms. Arguijo's mother decided to seek a divorce from F.M. because of the abuse she suffered from him. The Circuit Court of Cook County entered a judgment of divorce on April 19, 2004. Ms. Arguijo, then 16, cared for her mother who was dying of AIDS. On August 14, 2004, Ms Arguijo's mother passed away, leaving Ms. Arguijo without any biological parents and with a stepfather who had abused her.

21. On October 15, 2008, before her 21st birthday, Ms. Arguijo filed an I-360 self-petition as an abused child of a U.S. citizen. Ms. Arguijo submitted that she met the definition of a child pursuant to INA § 101(b)(1)(B), codified at 8 U.S.C. §1101(b)(1)(B), because the step-relationship between her and F.M. was created before her 18th birthday, as the statute requires. She submitted additional materials supporting her claim of eligibility for a VAWA self-petition, including evidence that: (1) her stepfather was a U.S. citizen; (2) she had resided with her stepfather; (3) she had been battered and subject to extreme cruelty by her stepfather; and (4) she was a person of good moral character.

22. On November 16, 2009, without first issuing a Notice of Intent to Deny, USCIS denied Ms. Arguijo's self-petition in a written decision signed by Defendant Renaud, finding that a "qualifying relationship" did not exist. (The November 16, 2009 decision is attached as Exhibit A.)

23. USCIS stated that for Ms. Arguijo to be eligible for the benefit sought, the termination of the marriage between her mother and stepfather had to have occurred after the date upon which she filed her self-petition. (Exhibit A, p. 2.)

24. USCIS also stated that the appropriate inquiry in stepparent/stepchild relationships, where the marriage creating the relationship was terminated, is whether a family relationship continued to exist as a matter of fact between the stepparent and stepchild. (Exhibit

A, p. 2.) USCIS noted that no continuing relationship existed between Ms. Arguijo and her stepfather. (*Id*.)

25. Ms. Arguijo filed a Notice of Appeal of this decision. On January 9, 2012, USCIS issued a written decision, again signed by Defendant Renaud, denying the appeal and affirming USCIS's November 16, 2009 decision. (A copy of this decision is attached as Exhibit B.) USCIS stated:

> The record shows you are related to the abuser through a step relationship and the marriage that created the relationship was terminated through divorce. However, the record does not demonstrate an ongoing, bona fide relationship with the abuser at the time the I-360 was filed. Therefore, the record does not show that a qualifying relationship existed at the time of filing this petition as required by law.

(Exhibit B, p. 3.)

26. On February 12, 2012, Ms. Arguijo filed a Motion to Reopen and Alternatively, Appeal of Denial of Self-Petition for Special Immigrant Battered Child (I-360). The Administrative Appeals Office ("AAO") of USCIS reviewed the January 9, 2012 decision on a de novo basis.

27. On December 17, 2012, the AAO issued a decision signed by Defendant Rosenberg dismissing Ms. Arguijo's appeal and ordering that the denial of her I-360 petition remain in effect. (A copy of this decision is attached as Exhibit C.) The AAO reiterated that to remain eligible as a self-petitioning child, a family relationship must continue to exist as a matter of fact between the stepparent and stepchild despite a legal termination of the marriage that created the stepparent/stepchild relationship. (Ex. C, p. 4.) The AAO determined that Ms. Arguijo did not qualify as a "child" on the date she filed her self-petition because she failed to maintain a relationship with her abusive stepfather after her mother divorced him because of his

abuse. (Ex. C, p. 4-5.) Thus, the AAO dismissed Ms. Arguijo's appeal and affirmed the denial of her VAWA petition.

COUNT ONE
(Violation of the Administrative Procedure Act)

28. Ms. Arguijo repeats, alleges, and incorporates the foregoing paragraphs as if fully set forth herein.

29. Ms. Arguijo has been aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.

30. The documents Ms. Arguijo submitted with her I-360 self-petition established her entitlement to VAWA relief as the abused child of a U.S. citizen

31. Defendants denied Ms. Arguijo's self-petition because they failed to properly interpret and apply the requirements of 8 U.S.C. § 1154(a)(1)(A)(iv) and they erroneously interpreted the definition of stepchild under 8 U.S.C. § 1101(b)(1)(B).

32. Defendants failed to enforce and administer the provisions of 8 U.S.C. § 1154(a)(1)(A)(iv) in conformance with Congressional intent.

33. Defendants acted arbitrarily, capriciously, and contrary to law in violation of the Administrative Procedure Act by denying Ms. Arguijo's I-360 VAWA self-petition.

34. Ms. Arguijo has exhausted all administrative remedies available to her as of right.

35. Ms. Arguijo has no other recourse to judicial review other than by this action.

COUNT TWO
(Violation of the Equal Protection Clause of the United States Constitution)

36. Ms. Arguijo repeats, alleges, and incorporates the foregoing paragraphs as if fully set forth herein.

37. The Fifth Amendment to the United States Constitution guarantees due process and equal protection of the laws.

38. The United States Constitution grants every person within its jurisdiction, including Ms. Arguijo, a right to equal protection of the laws. Aliens who are territorially present in the jurisdiction are considered persons protected by Fifth and Fourteenth Amendment due process.

39. The Equal Protection guarantee of the United States Constitution forbids different treatment of similarly situated persons without an adequate justification for different treatment.

40. Stepchildren and other child victims of abuse who seek relief under VAWA are similarly situated for purposes of the Equal Protection guarantee of the United States Constitution.

41. Defendants determined that Ms. Arguijo's status as a stepchild required that she maintain a relationship with her abusive stepfather to obtain relief under VAWA.

42. Defendants do not require that other children, including biological children, maintain a relationship with an abusive parent to obtain relief under the VAWA statute.

43. Defendants treat similarly situated persons seeking relief under the VAWA statute differently by requiring a stepchild to maintain a relationship with an abusive stepparent while not imposing that requirement upon other children.

44. Defendants lack an adequate justification for their different treatment of stepchildren and other children for purposes of eligibility to obtain relief under the VAWA statute.

WHEREFORE, Plaintiff prays that this Court:

A. Declare Defendants' denial of Jennifer Arguijo's I-360 application to be in violation of the Administrative Procedure Act;

B. Declare that the requirement that stepchildren maintain a relationship with an abusive stepparent to qualify for VAWA relief after the termination of the marriage creating the stepparent/stepchild relationship violates the Equal Protection guarantee of the Fifth Amendment of the United States Constitution.

C. Declare that Jennifer Arguijo meets the definition of a child pursuant to the provisions of VAWA and related immigration laws;

D. Order Defendant USCIS to immediately reopen and adjudicate Jennifer Arguijo's I-360 application;

E. Grant attorneys' fees and costs pursuant 28 U.S.C. §2412, 28 U.S.C. §1920, Fed. R. Civ. P. 54(d) and other authority; and

F. Grant any other relief the Court deems appropriate and just.

Dated: August 13, 2013

Respectfully submitted,

By: s/ Erin C. Arnold

Erin C. Arnold
McDermott Will & Emery LLP
227 West Monroe Street, Suite 4400
Chicago, Illinois 60606
(312) 372-2000 phone
(312) 984-7700 fax

Attorney for Jennifer Arguijo

DM_US 43826162-1.099731.0051

EXHIBIT A

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

November 16, 2009

JENNIFER ARGUIJO
KAROLYN A TALBERT
NATIONAL IMMIGRANT JUSTICE CENTER
1817 S LOOMIS 2ND FLOOR
CHICAGO IL 60608

A Number:	A094327239
File Receipt Number:	EAC0901550075
Applicant/Petitioner Name:	ARGUIJO, JENNIFER
Beneficiary:	ARGUIJO, JENNIFER

Dear Sir/Madam:

On October 17, 2008, you filed a Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360) to classify yourself under section 204(a)(1) of the Immigration and Nationality Act ("the Act"), as amended by the Battered Immigrant Women Protection Act of 2000, Public Law 106-386, dated October 28, 2000.

Evidence in the record demonstrates that you are statutorily ineligible for this classification. Therefore, the United States Citizenship and Immigration Services (USCIS) cannot reach a favorable decision, and your petition is denied. In arriving at this determination, USCIS has made findings of fact, conclusions of law, and where appropriate, discretionary determinations.

Section 204(a)(1) of the Act, as amended, requires that a self-petitioning child must show that he or she:

(1) has a qualifying relationship as the child of a citizen or lawful permanent resident of the United States, as defined in section 101(b)(1) of the Act;

(2) is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, based on a qualifying relationship with a citizen of the United States; or section 203(a)(2)(A) of the Act, based on a qualifying relationship with a lawful permanent resident of the United States;

(3) is living in the United States; or, if living abroad, the citizen or lawful permanent resident is an employee of the United States government or a member of the uniformed services (as defined in section 101(a) of Title 10, United States Code); or the qualifying abuse, as described in paragraph (5) below, occurred in the United States;

(4) has resided with the citizen or lawful permanent resident parent;

(5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or

lawful permanent resident during the qualifying relationship; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the qualifying relationship, and while residing with the citizen or lawful permanent resident; and

(6) is a person of good moral character. (A person under 14 years of age is presumed to be of good moral character unless we have reason to believe otherwise).

Paragraph (1) above requires that the self-petitioner establish that he or she has a qualifying relationship as the child of a United States citizen or lawful permanent resident. Through this petition, you seek to gain immigration benefits based on the marriage of your natural parent to REDACTED

It was held in the Matter of Mowrer, 17 I. & N. Dec. 613 (BIA 1981), that the appropriate inquiry in stepparent/stepchild relationships, where there has been a legal separation or where the marriage which created the relationship has been terminated by divorce or death, is whether a family relationship has continued to exist as a matter of fact between the stepparent and stepchild. In your self-affidavit you stated that in 2003 you "left the house because I was tired of all the abuse. I didn't want to continue living with REDACTED.

In addition, the letter dated October 15, 2008, from your representative, Kayla Casey, of National Immigrant Justice Center states that "Jennifer Arguijo has not maintained a relationship with REDACTED REDACTED Ms. Casey argues that you cannot be expected to have maintained a relationship wiht REDACTED REDACTED and that you should be eligible to file this self-petition.

However, evidence in the record indicates that this marriage was terminated on April 19, 2004. Pursuant to INA 204(a)(1)(A)(vi) in order to be eligible for the benefit sought, the termination of the marriage between your natural parent and your former stepparent would have had to have occurred after the date upon which you filed your self-petition. While there is a provision whereby a self-petitioning spouse may terminate the abusive marriage up to two years immediately preceding the filing of a self-petition, there is no corresponding provision for a self-petitioning child.

Therefore, a qualifying relationship did not exist at the time of filing this petition as required by law. Consequently, this petition can not be approved.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefits sought. See Matter of Brantigan, 11 I. & N. Dec. 493 (BIA 1966).

In view of the above, the petition is denied.

A094327239
EAC0901550075

If you disagree with this decision, or if you have additional evidence you believe shows the decision to be in error, you may appeal this decision by filing a completed Form I-290B with the Vermont Service Center within 33 days from the date of this notice. A copy of Form I-290B, Notice of Appeal or Motion, is enclosed for your use. You may also include a brief or other written statement in support of your appeal. If an appeal is not filed within the time allowed, this decision is final. While the Administrative Appeals Office (AAO) will decide your appeal, it must be sent to the Vermont Service Center with a filing fee of $585.00 to the following address:

Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

For more information about the filing requirements for appeals, please see 8 CFR §103.3, visit the USCIS website at www.uscis.gov, or contact the automated Form Request Line by calling 1-800-870-3676.

FINAL NOTE: Title 8, Code of Federal Regulations, Section 265.1 states in pertinent part, "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR-11."

Sincerely,

Daniel M. Renaud
Center Director

ENCLOSURES: I290B

EXHIBIT B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

January 9, 2012

A Number: A094327239
File Receipt Number:
Motion Number: EAC1101750017

HEATHER BENNO
ATTN HEATHER M BENNO
NATIONAL IMMIGRANT JUSTICE CENTER
208 S LASALLE SUITE 1818
CHICAGO IL 60604

Applicant/Petitioner Name: HEATHER BENNO
NATIONAL IMMIGRANT JUSTICE CENTER
Beneficiary: ARGUIJO, JENNIFER

Dear Sir/Madam:

On October 21, 2010 you filed a Notice of Appeal or Motion (Form I-290B) for consideration of the denial of your Petition for Amerasian, Widow (er) or Special Immigrant (Form I-360).

Title 8, Code of Federal Regulations, Part 103.3(a)(2) provides in part:

> Except as otherwise provided in this chapter, the affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

Title 8, Code of Federal Regulations, Part 103.5a(b) states:

> Effect of service by mail. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

Your Form I-290B cannot be accepted as a properly filed appeal because it was filed over the prescribed period of 33 days.

However, Title 8, Code of Federal Regulations, Part 103.3(a)(2)(v)(B)(2) provides for an untimely appeal to be treated as a motion:

FOR OFFICE USE ONLY
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> If an untimely appeal meets the requirements of a motion to reopen as described in 103.5(a)(2) of this part or a motion to reconsider as described in 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

Title 8, Code of Federal Regulations, Part 103.5(a)(2) provides in part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

Title 8, Code of Federal Regulations, Part 103.5(a)(3) provides:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Your Form I-290B is rejected as an appeal because it was not filed timely. However, your appeal can be treated as a motion because the requirements of Title 8, Code of Federal Regulations, 103.5(a)(2) or (3) have been met. Accordingly, the request to reconsider the previous decision is granted.

The petition was denied because you failed to establish that a qualifying relationship existed at the time of filing this petition as required by law. With your motion, you provided a legal brief from your new attorney, Heather M. Benno; your fee waiver request with expense documentation; and your initial self-affidavit. This is insufficient to overcome the grounds for denial as is discussed below.

Your fee waiver request with expense documentation is sufficient to warrant your request.

In your initial self-affidavit, you stated that in 2003 you "left the house because I was tired of all the abuse. I didn't want to continue living with REDACTED I now live with my boyfriend. Sometimes I would stay with my aunt, REDACTED She was my father's sister. She also lived in Chicago. My mom divorced REDACTED on April 19, 2004. My mother died on August 14, 2004. I saw REDACTED at the funeral. The only thing he said to me was "sorry."

In addition, in the initial letter dated October 15, 2008, from your prior attorney, Kayla Casey, she states that "Jennifer Arguijo has not maintained a relationship with REDACTED " Ms. Casey argued that you cannot be expected to have maintained a relationship with REDACTED and that you should be eligible to file this self-petition.

In the legal brief from your new attorney, Heather M. Benno, she argues that your petition was denied without first giving you the opportunity to contest the finding of ineligibility, and therefore, contradicts with DHS policy. However, in accordance with 8 CFR 103.2(b) Removal of the Standardized Request for Evidence Processing Timeframe Final Rule effected on June 18, 2007, USCIS has revised procedures and timeframes as applied to requests for evidence or the issuance of an intent to deny. Pursuant to 8 CFR 103.2(b)(8), an application or petition may be denied without a notice being issued if there is clear evidence of ineligibility. The record clearly established that the petition was ineligible for approval and that even if additional evidence or an explanation was provided; it could not make the petition approvable. Therefore, USCIS finds that the manner in which your petition was denied was in accordance with DHS policy.

It is also your representative's conclusion that your petition is prima facie approvable based on the plain text of the statute and the legislative history of VAWA. The record shows that the filing date of your petition is October 17, 2008. The filing of your petition requires you to establish that you had a qualifying relationship as the child of a United States citizen or lawful permanent resident. Through this petition, you seek to gain immigration benefits based on the marriage of your natural parent to REDACTED on June 15, 1999. However, evidence in the record indicates that this marriage was terminated on April 19, 2004. Pursuant to INA 204(a)(1)(A)(vi) in order to be eligible for the benefit sought, the termination of the marriage between

your natural parent and your former stepparent would have had to have occurred after the date upon which you filed your self-petition. While there is a provision whereby a self-petitioning spouse may terminate the abusive marriage up to two years immediately preceding the filing of a self-petition, there is no corresponding provision for a self-petitioning child.

It was held in the Matter of Mowrer, 17 I. & N. Dec. 613 (BIA 1981), that the appropriate inquiry in stepparent/stepchild relationships, where there has been a legal separation or where the marriage which created the relationship has been terminated by divorce or death, is whether a family relationship has continued to exist as a matter of fact between the stepparent and stepchild.

The record shows you are related to the abuser through a step relationship and the marriage that created the relationship was terminated through divorce. However, the record does not demonstrate an ongoing, bona fide relationship with the abuser at the time the I-360 was filed. Therefore, the record does not show that a qualifying relationship existed at the time of filing this petition as required by law. Consequently, this petition can not be approved.

After a complete review of the record of proceeding, including your motion, the grounds for denial have not been overcome. The previous decision is affirmed, and the petition is denied.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefits sought. See Matter of Brantigan, 11 I. & N. Dec. 493 (BIA 1966).

If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you may file a motion or appeal of this decision by completing a Form I-290B, Notice of Appeal or Motion. A copy is enclosed. You may also include a brief or other written statement. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

You must send your completed Form I-290B and supporting documentation with the appropriate filing fee to:

U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

For more information about the filing requirements for appeals and motions, please see 8 CFR103.3 or 103.5, visit the USCIS website at www.uscis.gov, or contact the automated Form Request Line by calling 1-800-870-3676.

Sincerely,

Daniel M. Renaud
Center Director

Enclosure(s)

EXHIBIT C

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DEC 19 2012

JENNIFER ARGUIJO
C/O MONY RUIZ-VELASCO
NATIONAL IMMIGRANT JUSTICE CENTER
208 S. LASALLE ST. SUITE 1818
CHICAGO, IL 60604

Date: DEC 17 2012 Office: VERMONT SERVICE CENTER File: A94 327 239
EAC 09 015 50075

IN RE: Self-Petitioner: JENNIFER ARGUIJO

PETITION: Petition for Immigrant Abused Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

ON BEHALF OF PETITIONER:

MONY RUIZ-VELASCO
NATIONAL IMMIGRANT JUSTICE CENTER
208 S. LASALLE ST. SUITE 1818
CHICAGO, IL 60604

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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition. The petitioner filed an untimely appeal which the director treated as a motion to reconsider. The director reconsidered the previous decision and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by her U.S. citizen parent.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen parent because the petitioner's mother and former stepfather divorced before the petition was filed. On appeal, the petitioner submits a brief and a copy of her previously submitted affidavit.

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)(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 two 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 [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 citizen parent. For purposes of this clause, residence includes any period of visitation.

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 her 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).

Facts and Procedural History

The petitioner is a citizen of Honduras who was born on October 23, 1987. The petitioner entered the United States on January 24, 1998 as a nonimmigrant visitor. In 1999, when she was 11 years old, her mother married F-M-[1], a United States citizen. The petitioner's mother and her stepfather divorced on April 19, 2004, when the petitioner was 16 years old. The petitioner filed the instant Form I-360 on October 17, 2008, when she was 20 years old.

On appeal, the petitioner contends that United States Citizenship and Immigration Services (USCIS) erroneously interpreted the law as requiring that the parent of an abused child stay married to the child's abusive step-parent and that such an interpretation goes against the congressional intent of the Violence Against Women Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

In this case, the petitioner has not shown that she had a qualifying relationship with a U.S. citizen parent at the time the Form I-360 was filed. The petitioner's mother and her former stepfather were married on June 16, 1999, and they subsequently divorced on April 19, 2004, when the petitioner was 16 years old. To remain eligible as a child under section 101(b)(1)(B) of the Act despite a divorce or legal termination of the marriage that created the stepparent/stepchild relationship, a petitioner must establish that a family relationship has continued to exist as a matter of fact between the stepparent and stepchild. *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981).

Here, the petitioner has failed to demonstrate any continuing relationship with her stepfather. The petitioner declared in her affidavit that she saw F-M- at her mother's funeral in 2004 and that the only thing he said to her was "sorry." The petitioner's previous attorney stated in her October 15, 2008, submission that the petitioner "has not maintained a relationship with [F-M-]." The petitioner does not indicate that she maintained any contact with her former stepfather either after they stopped living together or after the divorce hearing. Accordingly, the petitioner has not established that a family relationship continued to exist as a matter of fact between her and her stepfather after her parents divorced in 2004. Thus, the petitioner did not have a qualifying relationship at the time she filed her

[1] Name withheld to protect individual's identity.

Form I-360 on October 17, 2008, and she is therefore ineligible for immigrant classification as an abused child under section 101(b)(1) of the Act.

On appeal, counsel acknowledges the holding in *Matter of Mowrer*, but states that it is inapplicable to Form I-360 petitions filed by abused children and is only relevant in the context of alien relative petitions (Form I-130). Counsel states further that requiring a petitioner to maintain a relationship with the abuser goes against legislative intent.

However, the statutory language clearly requires the petitioner to meet the definition of a stepchild. *See Caminetti v. United States*, 242 U.S. 470, 485 (1917) (interpretation not required where statutory language is clear). The amendments to the abused child self-petitioning provisions further show that all such self-petitioners must meet the statute's definition of a child. The self-petitioning provisions for abused children were first enacted in 1994. Section 40701(a) of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (Sept. 13, 1994). In 2000, Congress amended these provisions to extend eligibility to children whose abusive parent had, within the past two years, lost U.S. citizenship or lawful permanent residency due to an incident of domestic violence. Victims of Trafficking and Violence Protection Act of 2000, Section 1503(b)(2), Title V, Division B, Pub. L. No. 106-386 (Oct. 28, 2000). At the same time, Congress provided age-out protections for self-petitioning children (and derivative children of abused spouses) whose petitions were filed prior to their twenty-first birthday, but who had not obtained lawful permanent residency by that date. *Id.* at section 1503(d)(2) (adding subsections 204(a)(1)(C) and (D) of the Act). In 2005, Congress extended eligibility even further to protect individuals who were abused as children, but who failed to file before turning 21, in central part, due to the abuse. Section 805(c), Violence Against Women and Dept. of Justice Reauthorization Act of 2005, Pub. L. 109-162 (Jan. 5, 2006). Counsel fails to point to any specific language in these statutory amendments to support her claim that a petitioner is not required to show that she meets the definition of a step-child. At no point in the past 18 years has Congress exempted abused children from establishing that they have a qualifying relationship with a U.S. citizen or lawful permanent resident at the time of filing. We recognize the difficulties that this requirement may present for a stepchild self-petitioner; however, USCIS lacks the authority to waive the statutory requirements at sections 101(b)(1)(B) and 204(a)(1)(A)(iv) of the Act.

Similarly, counsel's argument that the holding in *Matter of Mowrer* does not apply in the context of an abused child self-petition is without merit. The definition of a child at section 101(b) of the Act applies to all sections of Title II of the Act, including all family-based immigrant petitions filed under section 204 of the Act. Section 101(b) of the Act; 8 U.S.C. § 1101(b),. Thus, the holding in *Mowrer* is applicable to self-petitions for abused children as it relates to meeting the definition of a child at section 101(b) of the Act.

Contrary to counsel's assertion on appeal, applying *Matter of Mowrer* to abused stepchild self-petitions does not require a stepchild to endure further abuse. A stepparent-stepchild relationship may continue as a matter of fact where the stepchild has, for example, left the abusive home, but retained some contact with the abusive stepparent through court or social service agency proceedings or in other circumstances. If USCIS did not apply *Matter of Mowrer* to cases such as this one, stepchildren such

as the petitioner in this case would be disqualified on the date their parents divorced, as the statute requires the qualifying relationship to exist at the time the self-petition is filed (or as of the day before the self-petitioner's twenty-first birthday for petitions filed under the exception at section 204(a)(1)(D)(v) of the Act).

Accordingly, the petitioner has failed to establish that she had a qualifying relationship with a U.S. citizen at the time that she filed her I-360 petition. On the date of filing, the petitioner did not meet the definition of a child at section 101(b) of the Act because she had no familial relationship with her stepfather after the divorce and was consequently ineligible for immediate relative classification based on such a relationship. Thus, the petitioner is ineligible for immigrant classification as an abused child pursuant to section 204(a)(1)A)(iv) of the Act.

Conclusion

The petitioner has failed to show that she had a qualifying relationship at the time she filed her I-360 petition. At the time of filing, she did not meet the definition of a child at section 101(b)(1)(B) of the Act and she is ineligible for immigrant classification as the abused child of a U.S. citizen under section 204(a)(1)(A)(iv) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.