

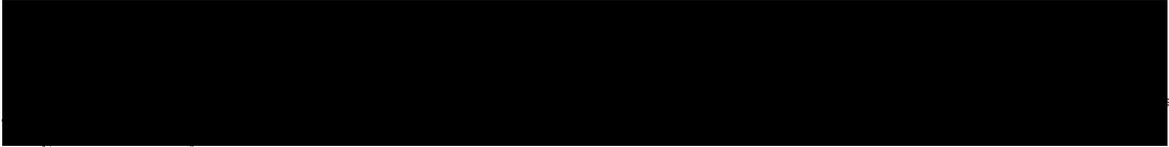
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**U.S. Citizenship
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 13 2005
EAC 04 163 52973

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Philippines who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse 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;

* * *

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; 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 marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence in the record, the petitioner wed his citizen spouse, [REDACTED] on February 19, 2000, in Spokane, Washington. The record further indicates that the petitioner and his spouse were divorced on

June 14, 2001. The petitioner filed the instant Form I-360 on April 29, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage.

The director denied the petition because more than two years had lapsed since the petitioner was the spouse of a citizen of the United States; hence, he was ineligible for this classification.

The petitioner submits a timely appeal with no additional evidence. On appeal, the petitioner states that he left his wife "because of her drug habit," and requests the opportunity to remain in the United States in order to care for his child. The petitioner does not address the director's findings as they relate to the petitioner's ineligibility. While we do not dispute the petitioner's appellate statements, we find such statements are not sufficient to overcome the director's stated ground for denial.

Section 204(a)(1)(A)(iii)(II) of the Act requires that the self-petitioner establish that he is married to a United States citizen or permanent resident at the time of the filing of the Form I-360 petition with certain exceptions.¹ The petitioner does not fall within one of the statutory exceptions to this requirement. His marriage to his citizen spouse was legally terminated more than two years prior to the filing of the instant petition; hence, the petition may not be approved.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past 2 years and the battering or extreme cruelty by the United States citizen spouse. *Id.* Section 1503(b), 114 Stat. at 1520-21.