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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 1 6 2004
EAC 03 209 53601

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center Director in a decision dated August 20, 2003. On September 24, 2003, counsel for the petitioner filed a motion to reopen and reconsider with the Vermont Service Center. The director dismissed the motion as untimely filed. The director forwarded the appeal dated September 22, 2003, to the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of St. Kitts who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

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;
> >
> > (C) Is residing in the United States;
> >
> > (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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, because according to the evidence on the record, the petitioner had divorced her permanent resident spouse more than two years prior to the filing of the petition. The director determined and the AAO concurs that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing a Form I-360 petition.

According to the evidence on the record, the petitioner married her United States resident spouse on November 24, 1987 and divorced on July 26, 1994. The petitioner filed the Form I-360 self-petition on July 7, 2003, more than eight years after the marriage was terminated.

On appeal, counsel for the petitioner argues that the petitioner is still eligible for the battered spouse visa even though her marriage was not valid because her husband had engaged in bigamy. Counsel's assertion is not persuasive. The petition was not denied on the grounds that her husband had engaged in bigamy.

The petitioner failed to establish that she was the spouse of a citizen either at the time of or within two years prior to the filing of the petition.

Section 204(a)(1)(A)(iii)(II) of the Act requires that the self-petitioner establish that she 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. The petitioner does not fall within one of the statutory exceptions to this requirement. She divorced her abusive spouse more than two years prior to the filing of the instant petition.

The petitioner's remarriage to one other than her abusive spouse prior to the filing of the petition is a bar to granting the petition.

Section 204 of the Act, as amended, does not provide that re-marriage before the self-petition is filed or approved is permitted. There is no provision for the approval of such a self-petition. Section 204(h) of the Act provides in part that the "[r]emarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) . . . shall not be the basis for revocation of a petition approval under section 1155 of this title." By implication, those who have remarried are not eligible for benefits under this provision of law. Common sense dictates that relief under the Violence Against Women Act of 1994 (VAWA) is limited to those who are vulnerable to spousal or parental abuse. Once remarried, an alien is less vulnerable to abuse by his or her prior spouse.

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.