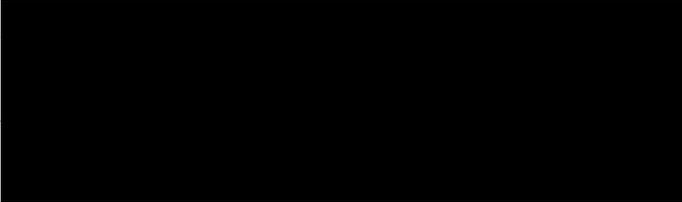




U.S. Citizenship  
and Immigration  
Services

B-9



FILE:



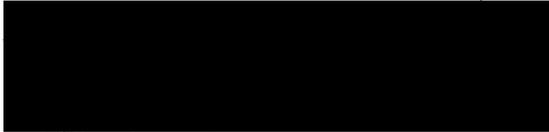
Office: VERMONT SERVICE CENTER

Date:

MAY 27 2004

IN RE:

Petitioner:  
Beneficiary:



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)

ON BEHALF OF PETITIONER:



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 for*

Robert P. Wiemann, Director  
Administrative Appeals Office

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Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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 Nigeria 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 citizen of the United States.

The director determined that the petitioner failed to establish that he met the requirements of 8 C.F.R. § 204.2(c)(1)(i)(A) because the petitioner was divorced from his abusive spouse on June 27, 2001, and he remarried on August 1, 2001. The director, therefore, denied the petition.

On appeal, counsel asserts that the Violence Against Women Act of 2000 (VAWA) eliminated the requirement that the self-petitioner be married to the abuser at the time of filing the petition. He further asserts that VAWA also states that the self-petitioner remains eligible to self-petition even if "the applicant remarried after the self-petition was filed or approved."

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) 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;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child<sup>1</sup>; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, shows that the petitioner entered the United States without inspection on March 15, 1996. The petitioner married Judy Richards, a citizen of the

<sup>1</sup> 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 U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

United States, on November 2, 1996, at Dallas, Texas. The petitioner subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on July 27, 2001. On August 1, 2001, in Tarrant County, Texas, the petitioner was remarried to [REDACTED]. On February 15, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse (Ms. Richards) during their marriage.

8 C.F.R. § 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. **The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition** [emphasis supplied].

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 to read, in part, as follows:

(II) For purposes of subclause (I), an alien described in this paragraph is an alien---

(aa) (AA) who is the spouse of a citizen of the United States;

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and---

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse...

Section 204(h) of the Act states, in part:

Remarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of section 204(a)(1)(A) or in section 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205 of the Act.

The record reflects that the petitioner and his citizen spouse divorced on July 27, 2001, less than two years prior to the filing of the self-petition on February 15, 2002. The record further reflects, however, that prior to the filing of the self-petition on February 15, 2002, the petitioner remarried on August 1, 2001. Contrary to counsel's argument on appeal, 8 C.F.R. § 204.2(c)(1)(ii) clearly states that the self-petitioner's remarriage will be a basis for the denial of a pending self-petition.

The provisions of section 204(h) of the Act do not apply to the petitioner's case because his self-petition had not been approved before he remarried. In fact, the petitioner had not even filed his self-petition before he remarried. The petitioner, therefore, is ineligible for the benefit sought, and the petition must be denied.

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.