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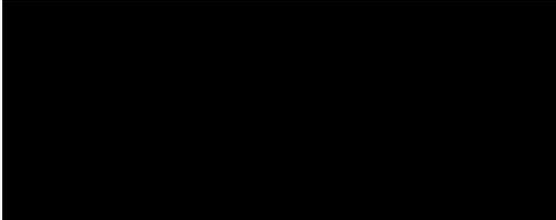
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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

NOV 22 2004

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IN RE:

Petitioner:

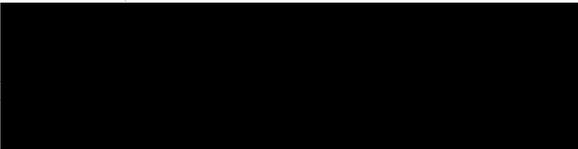
Beneficiary:



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.

*Mari Johnson*

*Robert P. Wiemann*, Director  
Administrative Appeals Office

**DISCUSSION:** The Acting Vermont Service Center Director denied the preference visa petition on January 22, 2004. Counsel for the petitioner filed a timely appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Egypt 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.

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 director determined that the petitioner failed to establish that he is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, because according to the evidence on the record, the petitioner had divorced his citizen 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 his United States citizen spouse on August 2, 1998 and divorced on October 27, 1999. The petitioner filed the Form I-360 self-petition on February 3, 2003, more than three years after the marriage was terminated.

On appeal, counsel for the petitioner asserts that the statutory bar violates the petitioner's due process and equal protection rights. Counsel further asserts that the petitioner should be accorded special immigrant status because he was previously married to a U.S. citizen, entered into the marriage in good faith, resided with the citizen spouse, has been battered or subjected to extreme cruelty by his citizen spouse during the marriage, is a person of good moral character and is someone whose removal would result in extreme hardship to himself or his child.

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. The petitioner does not fall within one of the statutory exceptions to this requirement. He divorced his allegedly abusive spouse more than two years prior to the filing of the instant petition.

Congress's goal in enacting the Violence Against Women Act of 1994 (VAWA) was to eliminate barriers to women leaving abusive relationships. *H.R. Rep. No. 103-395*, at 25 (stating that the goal of the bill is to "permit[ ] battered immigrant women to leave their batterers without fearing deportation"). While the spirit and intent of the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice, Congress found the Act failed to protect all that it intended to protect, including divorced battered immigrants and children who were abused before the age of 21. In a hearing before the Subcommittee on Immigration and Claims, Congresswoman Jackson-Lee discussed those people for whom VAWA was created to protect. The Congresswoman stated:

The 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser . . . I can say that unfortunately, our job, as lawmakers, is not yet done. Our intent in 1994 was to provide battered immigrants with meaningful access to lawful immigration status, thus allowing them to safely leave their abusers. Nevertheless, we are still finding groups of battered immigrants who are trapped in abusive relationships despite the access to such lawful status . . . [D]ivorced battered immigrants do not have access to VAWA immigration relief. There are many "savvy" abusers who know that if they divorce their abused spouse they will cut off their victim's access to VAWA relief. H.R. 3083 allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce.<sup>1</sup>

Counsel asserts that the director's decision denying the petition violated the petitioner's due process rights. The Fifth Amendment to the United States Constitution provides, in part, that no person may be deprived of life, liberty, or property without due process of law. U.S. Const., Amend. 5. Counsel further asserted that "[b]y not affording him even a review of his evidence, he has no hearing at all on the merits of his case. Thus, [the director] has violated his right to due process." In the instant case, the petitioner has filed an appeal of the director's decision to the AAO. He has exercised his appeal rights. Counsel's assertion that the petitioner has not been afforded the right to review is baseless.

<sup>1</sup> *Battered Immigrant Women Protection Act of 2000, (BIWPA): Hearing on H.R. 3083 Before the House Subcommittee on Immigration and Claims, 106<sup>th</sup> Cong. (2000)(statement of Congresswoman Jackson-Lee).*

Counsel asserts that the director violated the petitioner's right to equal protection by determining that the petitioner does not qualify as a special immigrant solely because he was divorced more than two years before the filing date of the petition. Counsel further asserts "there is no reasonable distinction between an alien who, on the one hand, has filed an I-360 petition within two years of his divorce, and those who for whatever reason have filed petitions more than two years after such divorces." Congress amended the Act to afford protection to battered spouses who sought relief within two years of their divorce provided they could demonstrate a connection between the divorce and the domestic abuse. According to the legislative history quoted above, Congress amended the Act seeking to avoid the situation whereby a battered spouse might feel constrained to remain in the abusive relationship in order to obtain VAWA relief. In the instant case, the petitioner was divorced more than two years prior to the filing of the petition. There is a rational basis to distinguish between aliens who are married or recently divorced from their abusive spouses and those whose marriages have terminated more than two years prior to the filing of the petition. The former class seeks protection from abusive spouses whereas the latter have already escaped their abusive spouses.

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.