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U.S. Citizenship  
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FILE:

[REDACTED]  
EAC 04 178 52058

Office: VERMONT SERVICE CENTER

Date: NOV 07 2005

IN RE:

Petitioner: [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)

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center Director in a decision dated January 26, 2005. 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 Laos 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.

According to the evidence contained in the record, the self-petitioner entered the United States on February 25, 2001 as a K-1 nonimmigrant. The self-petitioner married United States citizen, [REDACTED] on March 15, 2001 in St. Paul, Minnesota. The petitioner and [REDACTED] were divorced on May 30, 2002.<sup>1</sup> The instant petition was filed on May 26, 2004. The director denied the petition on January 26, 2005, based upon the determination that the petitioner remarried prior to the filing of the Form I-360 petition and therefore that she was not eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.<sup>2</sup>

<sup>1</sup> File No. DM-F2-02-683 of the Ramsey County District Court, Second Judicial District of the state of Minnesota.

<sup>2</sup> In the petitioner's sworn statement dated May 17, 2004 the petitioner states that she is "currently living . . . with [her] husband Yang Her." Further, the Form I-360, which was filed nearly two years after the petitioner's divorce from her allegedly abusive spouse, indicates that the petitioner is "married."

On appeal, while counsel does not dispute that fact that the petitioner is currently married and that her remarriage occurred *prior* to the filing of the Form I-360, he argues that the director's decision was based upon "an erroneous interpretation of the INA." Counsel states that the statutory provision at issue "is crystal clear" in establishing that "remarriage of the alien will not deprive the alien to benefits of a petition which *has already been approved*." [Emphasis added.] Counsel acknowledges that section 204(a)(1)(A)(iii) is silent on whether the alien's remarriage, prior to approval of the self-petition, serves to disqualify the petitioner but argues that the director should not have interpreted the statute in such a way as to extend the statute "beyond the clear wording to introduce a new requirement that the alien forego a chance to remarry on pain of losing the change of obtaining permanent residence."

The material facts are not in dispute. Rather, the issue before us on appeal is whether the director's interpretation of section 204 is a reasonable construction of the statute.

A. History of Abused Spouse Status

1. 1994 Amendments to section 204.

Congress first granted the ability of an abused spouse to self-petition in 1994, when it enacted the *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. 103-322, 108 Stat. 1796 (Sep. 13, 1994). Section 40701, located in Subtitle G, amended section 204 to permit an abused spouse and children of a United States citizen or lawful permanent resident to file a petition for immigrant status. Congress observed that:

Under current law only the United States citizen or lawful permanent resident spouse is authorized to file a relative petition, and this spouse maintains full control over the petitioning process. He or she may withdraw the petition at any time for any reason. The purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.<sup>3</sup>

Under the amended section 204, an abused alien spouse would no longer have to rely on her abusive U.S. citizen or lawful permanent resident spouse to petition for immigrant status on her behalf.

On March 26, 1996, the Immigration and Naturalization Service (INS), predecessor to the USCIS, promulgated an interim rule to implement the changes mandated by section 40701.<sup>4</sup> The rule outlined the various provisions for abused spouses of U.S. citizens and lawful permanent residents to file a self-petition. In explaining the interim rule, the INS stated:

The rule further provides, however, that a pending spousal self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser.

<sup>3</sup> See H.R. Rep. 203-395, available at 1993 WL 484760 at p. 41.

<sup>4</sup> See 61 FR 13061 (Mar. 26, 1996), available at 1996 WL 131508.

The implementing regulatory language at 8 C.F.R. § 204.2(c)(1)(ii) states:

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.

Finally, the interim rule at 8 C.F.R. § 205.1(a)(3)(i)(E) established that approval of a self-petition made under section 204 is automatically revoked as of the date of approval:

Upon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act.

Thus, as early as 1996, section 204 has been interpreted as requiring a self-petitioning abused spouse to be married at the time of filing and not remarry prior to becoming a lawful permanent resident.<sup>5</sup>

## 2. 2000 Amendments to section 204.

In 2000, Congress further amended § 204 by enacting the *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000) ("VTVPA"). Division B of that Act contained the *Violence Against Women Act of 2000 (VAWA 2000)*. Pursuant to *VAWA 2000* and the *VTVPA*, seven groups of battered aliens became eligible to self-petition for classification as immediate relatives or preference immigrants under sections 204(a)(1)(A)(iii) or (iv), or 204(a)(1)(B)(ii) or (iii).<sup>6</sup>

The Battered Immigrant Women Protection Act of 2000 is contained within the *VTVPA*.<sup>7</sup> In *VTVPA* § 1502(a), Congress made three findings. First, it found that the goal of *VAWA 1994* was to remove immigration

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<sup>5</sup> In a policy memo from [REDACTED] Executive Associate Commissioner, entitled "Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents," (April 16, 1996), the INS Office of Programs emphasized the regulatory requirement that "[a] pending spousal self-petition will be denied or the approval of a spousal self-petition revoked, however, if the self-petitioning spouse remarries before he or she becomes a lawful permanent resident."

<sup>6</sup> Group 1 — battered alien spouses of U.S. citizens or lawful permanent residents (LPR). Group 2 — alien spouses whose USC or LPR children are being battered by the U.S. citizen or LPR spouse. Group 3 — alien children battered by their U.S. citizen or LPR parent. Group 4 — divorced battered spouses of U.S. citizens or LPR who demonstrate a connection between the abuse suffered and the divorce and who file a petition within 2 years of the divorce. Group 5 — battered widowed spouses of U.S. citizens who file a petition within 2 years of the date of U.S. citizen's death. Group 6 — battered alien spouses of former U.S. citizens or LPRs spouse and who file a petition within 2 years of the date of loss. Group 7 — battered alien children of former U.S. citizens or LPRs and who file a petition within 2 years of the date of loss. See *VAWA* §§ 40701-02; *VTVPA* §§ 1503(b) and (c).

<sup>7</sup> *VTVPA* § 1501.

laws as a barrier that kept battered immigrant women and children locked in abusive relationships.<sup>8</sup> Second, it found that providing battered immigrant women and children with protection from deportation freed them to cooperate with law enforcement and prosecutors, without fear that the abuser would retaliate by withdrawing or threatening to withdraw, access to an immigration benefit under the abuser's control.<sup>9</sup> Third, Congress found there are several groups of battered women and children who do not have access to the immigration protections of VAWA 1994.<sup>10</sup> VTVPA §§ 1503(b) & (c) amended section 204 to permit an abused alien spouse, who had already terminated her marriage to the abusive U.S. citizen or lawful permanent resident, to self-petition, provided that the alien demonstrated a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the spouse.<sup>11</sup> Prior to this amendment, a self-petitioning abused spouse was required to be married to the abusive spouse at the time of filing the petition. Further, VTVPA § 1507(b) amended section 204(h), to permit an abused self-petitioning spouse, *whose petition had already been approved*, to remarry without having the approval of her petition revoked. Congress did not amend the statute to allow an abused self-petitioning spouse to remarry prior to filing the self-petition.

In enacting *VAWA 1994*, Congress created three categories of battered aliens eligible to self-petition for classification as immediate relatives or preference immigrants under sections 204(a)(1)(A)(iii) or (iv), or 204(a)(1)(B)(ii) or (iii) of the INA. In 2000, under the VTVPA, Congress extended eligibility for the self-petitioning process to four additional groups — (1) widowed battered spouses of U.S. citizens, (2) divorced battered spouses of U.S. citizens and lawful permanent residents, (3) spouses of U.S. citizens and lawful permanent residents who lost status<sup>12</sup> and (4) battered alien children of U.S. citizens or lawful permanent residents who lost status. In so doing, Congress clearly remained focused exclusively on those aliens who were battered prior to acquiring lawful permanent resident status. Congress also directly and explicitly incorporated these additional four groups into the VAWA statutory framework to ensure that these aliens were covered by the statutory protections and mechanisms established for analysis of their claims.

#### B. The Director's Statutory Construction of § 204.

The Director's interpretation that the petitioner's remarriage, prior to approval of her petition, disqualified her was based on Congress' specific reference to remarriage in section 204(h). As indicated above, under that provision, remarriage of the alien after approval of the petition would not serve as the sole basis for revocation of the petition. Congress did not refer to the issue of marriage in the other provisions of section 204 pertaining to abused spouses about the issue of remarriage. Under the maxim of statutory construction, *expressio unius est exclusio alterius*<sup>13</sup>, the director's reference to section 204(h) indicates that the mention of remarriage only after approval of the petition meant that Congress did not intend to allow remarriage in any other situation. The fact that Congress specifically addressed the issue

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<sup>8</sup> § 1502(a)(1).

<sup>9</sup> § 1502(a)(2).

<sup>10</sup> § 1503(a)(3).

<sup>11</sup> Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

<sup>12</sup> See VTVPA § 1503(b) and (c).

<sup>13</sup> "Mention of one thing implies exclusion of another. When certain persons or things are specified in law . . . an intention to exclude all others from its operation may be inferred." See *Black's Law Dictionary*, 6<sup>th</sup> Edition (1990).

of remarriage in the context of revocations but did not address it elsewhere means that Congress did not intend to change any other provisions related to remarriage. Consequently, the director's interpretation of section 204 that remarriage of the abused spouse while her petition was pending served to disqualify her, was reasonable given that Congress only provided that remarriage after approval would not disqualify the abused spouse. The inclusion of remarriage in section 204(h) as a non-disqualifying factor, after petition approval, strongly suggests that remarriage is a disqualifying factor prior to petition approval. The prohibition against using remarriage as a basis for revoking an approved petition is likely based on a desire for finality. Once the abused spouse made a sufficient showing that her self-petition should be granted, and such petition was granted, there would not be any purpose in requiring the abused spouse to delay remarrying.<sup>14</sup>

We note that the director's interpretation is consistent with the definition of "immediate relative" at INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i), which states, in pertinent part:

In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date **and only until the date the spouse remarries.** for purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act [i.e., the VAWA self-petitioning provisions] remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

[Emphasis added.]

The director's interpretation is also consistent with the Congressional intent of *VAWA 1994* and *VAWA 2000*. The motivation of Congress in 1994 was to provide a means for an abused immigrant spouse to obtain immigration benefits over which her abusive spouse held complete control.<sup>15</sup> Because of such control, the immigrant spouse could hardly report the abuse to the police, or seek government assistance, for fear of jeopardizing any chance to obtain lawful status in the United States. VAWA 1994 limited the abusive spouse's control by permitting the abused spouse to self-petition. However, the self-petitioning spouse was still required to be married to the abusive U.S. citizen or LPR at the time the petition was filed.<sup>16</sup> Congress found this unsatisfactory, such that in 2000, it further amended section 204 to permit an abused immigrant spouse to file a self-petition, even though the abusive marriage had been legally terminated.<sup>17</sup> The abused spouse was required to demonstrate a connection between the legal termination of the marriage within the

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<sup>14</sup> Requiring an alien to be unmarried in order to be eligible for an immigration benefit is not limited to section 204. For example, section 203 sets forth the preference allocation for family-sponsored immigrants. The first preference is the unmarried sons and daughters of U.S. citizens. *See* Section 203(a)(1).

<sup>15</sup> H.R. Rep. 203-395, available at 1993 WL 484760 at p.41.

<sup>16</sup> *See* 8 C.F.R. § 204.2(c)(1)(ii)(1996).

<sup>17</sup> VTVPA § 1503.

past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.<sup>18</sup> Congress also provided that remarriage, after the petition had been approved, would not be a basis for revoking the petition.<sup>19</sup> While Congress broadened the eligibility requirement to include divorced spouses filing within two years of the divorce, it decided only to include the possibility of remarriage in the section pertaining to divorced spouses that had approved petitions but had not adjusted status or entered the United States as a permanent resident. This is very significant because "[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning."<sup>20</sup>

The fact that Congress left alone CIS' interpretation that remarriage prior to petition approval would result in a denial is compelling evidence that it considered the interpretation and found it an accurate view of Congressional intent. Accordingly, we do not find that it was unreasonable for the director to infer that Congress wanted aliens with pending petitions to be either still married to the abusive spouse, or divorced within the last two years, but not married to another person. Therefore, we do not find that the director erred in its application of section 204 in denying the instant petition.

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.

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<sup>18</sup> Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

<sup>19</sup> VTVPA § 1507(b), amending 8 U.S.C. § 204(h).

<sup>20</sup> *Bledsoe v. Palm Beach County Soil and Water Conservation District*, 133 F.3d 816, 822 (11<sup>th</sup> Cir. 1998), *citing Florida National Guard v. Federal Labor Relations Authority*, 699 F.2d 1082, 1087 (11<sup>th</sup> Cir. 1983).