

B9

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



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



FILE: [Redacted]  
EAC 04 199 52492

Office: VERMONT SERVICE CENTER

Date: **JAN 09 2006**

IN RE: Petitioner: [Redacted]

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:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a native and citizen of India 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 permanent resident of the United States.

The petitioner filed the instant Form I-360 petition on June 23, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his lawful permanent resident spouse during their marriage. Specifically, the petitioner claims eligibility based upon his marriage to [REDACTED] a lawful permanent resident of the United States. On the Form I-360, the petitioner indicated that he was divorced. The divorce decree contained in the record reflects that the petitioner's marriage [REDACTED] was dissolved on March 12, 2002.

The director denied the petition on February 9, 2005 based upon the determination that the petitioner failed to establish that he has a qualifying relationship as the spouse of a United States citizen or lawful permanent resident. The petitioner filed a timely appeal, dated February 28, 2005.

On the Form I-290B, the petitioner states the following as the reason for his appeal:

The petition was based on first marriage with [REDACTED] further, the second marriage to [REDACTED] and [sic] in similar circumstance on 30<sup>th</sup> Sept 2003 and is still in required time frame.

The supporting evidence is submitted for your [review].

The petitioner supplements his appeal with a sworn statement and evidence regarding his second marriage. The petitioner does not allege any error on the part of the director or refute the director's finding that the petitioner was divorced from [REDACTED] more than two years prior to the filing of the petition.<sup>1</sup> The fact that the petitioner's second marriage ended within the "required time frame" is immaterial as the petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The instant Form I-360 was based upon the petitioner's marriage to Parminder Kaur, not Crystal Card.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

<sup>1</sup> Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act indicates that a self-petitioner must have been a "bona fide spouse of a lawful permanent resident *within the past 2 years*" and must be able to demonstrate "a connection between the legal termination of the marriage with the past 2 years and battering or extreme cruelty by the United States citizen spouse."

Inasmuch as the petitioner has failed to specifically identify any erroneous conclusion of law or statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

**ORDER:** The appeal is dismissed.