

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Bq

PUBLIC COPY



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 06 2006
EAC 03 158 50035

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition in a decision dated July 28, 2004. 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 the Dominican Republic 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 regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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 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 never been legally married to the spouse whom he claimed had abused him. Therefore, the director denied the petition.

According to the evidence on the record, the petitioner married three different women. The petitioner wed ██████ in July 1987 in the Dominican Republic. The petitioner had three children with his first wife in 1985, 1987, and 1989. The petitioner entered the United States as a B-2 nonimmigrant visitor on October 23, 1989. The petitioner wed U.S. citizen ██████ on July 10, 1991 in Bronx, New York, prior to the termination of his first marriage. The petitioner's marriage to ██████ was legally terminated on July 25, 1991. The petitioner's marriage to ██████ ended in divorce on January 15, 1993. The petitioner wed U.S. citizen ██████ on August 13, 1993 in Bronx, New York. ██████ filed a Form I-130 petition on the petitioner's behalf on September 24, 1993. The district director denied the Form I-130 petition on February 10, 1995. ██████ appealed the district director's decision. The BIA sustained the appeal on May 31, 1996. On April 25, 2003, the petitioner filed the Form I-360 self-petition, claiming that his second wife, ██████ had battered or subjected him to extreme cruelty during their marriage.

On appeal, the petitioner states that he is filing the appeal in order to preserve his LIFE Act¹ rights and that he needed to review the record of proceeding to verify the dates of his 1991 divorce and marriage.

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. The petitioner married the allegedly abusive spouse before his first marriage was legally terminated; therefore, his second marriage is *null and void*.

The petitioner failed to establish that he has a qualifying relationship with the alleged abuser because he was not lawfully married to her at any time.

Even if the petitioner's second marriage had been valid, it was terminated prior to the petitioner's filing of the instant petition. More than eleven years lapsed between the legal termination of the petitioner's marriage with the abusive spouse and the filing of the instant petition. 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.

Further, the petitioner remarried a third time, prior to the adjudication of the instant petition and after filing the instant petition.

History of Abused Spouse Status

1. 1994 Amendments to section 204 of the Act.

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 of the Act 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:

¹ Legal Immigration Family Equity Act, Pub. L. 106-553, 114 Stat. 2762 (2000).

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.²

Under the amended section 204 of the Act, 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 legacy Immigration and Naturalization Service (INS), predecessor to the USCIS, promulgated an interim rule to implement the changes mandated by section 40701 of the *Violent Crime Control and Law Enforcement Act of 1994*.³ 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.

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 of the Act 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 of the Act was 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.⁴

² See H.R. Rep. 203-395, available at 1993 WL 484760 at p. 41.

³ See 61 Fed. Reg. 13061 (March 26, 1996), available at 1996 WL 131508.

⁴ In a policy memo from T. Alexander Aleinikoff, Executive Associate Commissioner, entitled "Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent

2. 2000 Amendments to section 204 of the Act.

In 2000, Congress further amended section 204 of the Act by enacting the *Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). 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) of the Act.⁵

The Battered Immigrant Women Protection Act of 2000 is contained within the VTVPA.⁶ In VTVPA § 1502(a), Congress made three findings. First, it found that the goal of VAWA 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships.⁷ 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.⁸ Third, Congress found there are several groups of battered women and children who do not have access to the immigration protections of VAWA 1994.⁹ VTVPA §§ 1503(b) & (c) amended section 204 of the Act 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.¹⁰ 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.

In addition to the amendments contained in §§ 1503(b) and (c) § 1507(b) of the VTVPA, Congress amended section 204(h) of the Act to permit an abused self-petitioning spouse *whose petition had already been approved* to remarry without having the approval of her petition revoked. The fact that Congress specifically addressed the issue of remarriage in the context of revocations but did not address it

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."

⁵ 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).

⁶ VTVPA § 1501.

⁷ VTVPA § 1502(a)(1).

⁸ VTVPA § 1502(a)(2).

⁹ VTVPA § 1503(a)(3).

¹⁰ Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

elsewhere means that Congress did not intend to change any other provisions related to remarriage.¹¹ Under section 204(h) of the Act, 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. 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) of the Act 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.¹²

The director's interpretation is also consistent with the definition of "immediate relative" at section 201(b)(2)(A)(i) of the Act, 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.]

Further, the director's interpretation is 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.¹³ 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.¹⁴ Congress

¹¹ Consider the maxim of statutory construction, *expressio unius est exclusio alterius*. "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, 6th Edition (1990)*.

¹² Requiring an alien to be unmarried in order to be eligible for an immigration benefit is not limited to section 204 of the Act. For example, section 203 of the Act 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) of the Act.

¹³ H.R. Rep. 203-395, available at 1993 WL 484760 at p.41.

¹⁴ See 8 C.F.R. § 204.2(c)(1)(ii)(1996).

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.¹⁵

The abused spouse was required to demonstrate a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.¹⁶ Congress also provided that remarriage, after the petition had been approved, would not be a basis for revoking the petition.¹⁷

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. As recently as January 5, 2006, Congress enacted VAWA 2005, which made further amendments to provisions related to battered spouses and children.¹⁸ Again, however, Congress made no provisions for a remarried petitioner to self-petition based upon her prior abusive marriage. The fact that in three separate amendments to the original VAWA statute 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. 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."¹⁹

It is further noted that on December 9, 2005, in *Delmas v. Gonzalez*, 2005 WL 3926090 (Case No. 05-21507, S.D. Fla), the District Court upheld CIS's interpretation of the VTVPA so as to disqualify an alien who had remarried before filing a self-petition. While we acknowledge that a district court's decision is not binding precedent, the decision underlines the fact that CIS' interpretation of the statute is reasonable. The court stated:

Plaintiff argues that there is no evidence that Congress intended remarriage to negate the need for protection of the abused spouse. The legislative history and context of VAWA and the VTVPA show otherwise. VAWA relief is limited to those vulnerable to abuse. The AAO apparently concluded that an abused spouse who remarries prior to filing a self-petition is not the type of battered immigrant woman Congress was concerned with when enacting VAWA or the VTVPA ad, therefore, permissibly construed the statute to deny the instant petition.²⁰

Based upon the above discussion, it is apparent 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 at the time of filing. Therefore, we do not find that the director erred in denying the instant petition.

¹⁵ VTVPA § 1503.

¹⁶ Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

¹⁷ VTVPA § 1507(b), amending 8 U.S.C. § 204(h).

¹⁸ Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law No. 109-162, (VAWA 2005).

¹⁹ *Bledsoe v. Palm Beach County Soil and Water Conservation District*, 133 F.3d 816, 822 (11th Cir. 1998), *citing Florida National Guard v. Federal Labor Relations Authority*, 699 F.2d 1082, 1087 (11th Cir. 1983).

²⁰ *Id.* at 3.

Beyond the director's decision, the petitioner has failed to establish that he had resided with his spouse, had been battered by, or had been the subject of extreme cruelty perpetrated by, the citizen during the marriage; that he is a person of good moral character; and that he entered into the marriage in good faith.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1362. Here, that burden has not been met.

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.