



U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
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Date: AUG 02 2007

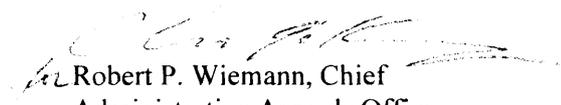
IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her United States citizen spouse.

The director denied the petition because the record failed to establish that the petitioner had a qualifying relationship with her former husband.

The petitioner, through counsel, submitted a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien "was a bona fide spouse of a United States citizen within the past 2 years." Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The petitioner in this case is a native and citizen of Brazil who entered the United States as a nonimmigrant visitor (B-2) on July 28, 2000. On December 31, 2000, the petitioner married R-P¹, a U.S. citizen, in Florida. On December 18, 2003, their marriage was dissolved by order of the Circuit Court of the Ninth Judicial Circuit in Orange County, Florida. The petitioner filed this Form I-360 on May 19, 2006. On December 21, 2006, the director denied the petition because the record did not establish that the petitioner had a qualifying relationship with her former husband due to the dissolution of their marriage over two years before the petition was filed.

On appeal, counsel describes how after the petitioner's divorce, the petitioner "fell into deep depression," and was unable to work. After finding a job, counsel states that the petitioner decided to find an attorney to assist her with her immigration case but was diagnosed with Bells Palsy. Counsel then argues:

After her treatment in June of 2005, [the petitioner] came back to work and was ready to find an attorney to help her. Her intentions of hiring an attorney and having her abuse case

¹ Name withheld to protect individual's identity.

sent to immigration does meet the 2-year requirement.

The only reason why she did [not] file her case with immigration at that time was because of another unexpected event, where she was diagnosed once again with Bells Palsy.

While counsel submits a letter from the petitioner and the petitioner's doctor confirming counsel's statements, counsel does not submit any legal argument or case law to support his contention that the petitioner remains eligible for approval despite her failure to file within the two-year period following her divorce because "her intentions" fell within the required period.

We are not persuaded by counsel's argument. The language of the statute clearly indicates that to remain eligible despite no longer being married to a United States citizen, an alien must have been the bona fide spouse of the United States citizen "within the past two years." As previously noted, the petitioner in this case was divorced from her spouse for more than two years at the time of filing the petition. The statute does not contain any provision or exception which allows for a petitioner who failed to file with the two-year period following a divorce, to establish eligibility based upon his or her *intent* to file within the two-year period.

Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with her former husband. Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. As the petitioner's marriage to her former husband was legally terminated over two years before this petition was filed, she is ineligible for immediate relative classification based on their former relationship.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.