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U.S. Citizenship  
and Immigration  
Services

Bq

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: FEB 02 2007  
EAC 06 099 52350

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center Director. 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 Philippines 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 director denied the petition on July 27, 2006, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse or former spouse of a United States citizen.

The petitioner, through counsel, filed a timely appeal and brief.

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 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).

According to the evidence contained in the record, the petitioner married C-J<sup>1</sup>, a citizen of the United States in the Philippines on June 18, 2002. The petitioner entered the United States on May 23, 2003, as a K-3 nonimmigrant. The petitioner and C-J- were divorced on February 13, 2004. On January 8, 2005, the petitioner married T-A-<sup>2</sup> a United States citizen.<sup>3</sup> The petitioner filed the instant petition on February 10, 2006. The director denied the petition on July 27, 2006, based upon the determination that because the petitioner remarried prior to the filing of the Form I-360 petition, she was not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act based upon her claim of being battered or subjected to extreme cruelty by her former spouse, C-J-.

On appeal, 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. Instead, counsel argues that the director relied on regulations that do not reflect subsequent amendments to the law and erroneously applied the law and regulations to the petitioner's case. Thus, the material facts do not appear to be in dispute. Rather, the issue before us on appeal is whether the director's interpretation of section 204 in denying the petition because it was filed both after she had divorced her allegedly abusive citizen spouse and after her subsequent remarriage to a second United States citizen is a reasonable construction of the statute.

#### History of Abused Spouse Status

##### 1. 1994 Amendments to section 204 of the Act.

<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> Name withheld to protect individual's identity.

<sup>3</sup> While there is no documentary evidence of the petitioner's marriage to T-A- or of T-A-'s United States citizenship, these facts are not disputed by counsel.

Congress first granted an abused spouse the ability 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:

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>4</sup>

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*.<sup>5</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.

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:

<sup>4</sup> See H.R. Rep. 203-395, available at 1993 WL 484760 at p. 41.

<sup>5</sup> See 61 FR 13061 (Mar. 26, 1996), available at 1996 WL 131508.

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.<sup>6</sup>

## 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.<sup>7</sup>

The Battered Immigrant Women Protection Act of 2000 is contained within the VTVPA.<sup>8</sup> 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.<sup>9</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>10</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>11</sup> 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.<sup>12</sup> As previously

<sup>6</sup> 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 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>7</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>8</sup> VTVPA § 1501.

<sup>9</sup> § 1502(a)(1).

<sup>10</sup> § 1502(a)(2).

<sup>11</sup> § 1503(a)(3).

<sup>12</sup> Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

discussed, 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) of the VTVPA, Congress also 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 elsewhere means that Congress did not intend to change any other provisions related to remarriage.<sup>13</sup> Congress did not refer to the issue of remarriage in the other provisions of section 204 pertaining to abused spouses. Consequently, the director's interpretation of section 204, that her remarriage prior to the filing of the self-petition 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.<sup>14</sup>

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.<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

<sup>13</sup> This is a maxim of statutory construction, *expressio unius est exclusio alterius*.<sup>13</sup>

<sup>14</sup> 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.

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

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 past two years and the 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>

As correctly noted by counsel, Congress broadened the eligibility requirement to include divorced spouses filing within two years of the divorce. However, Congress 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.<sup>20</sup> 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."<sup>21</sup>

It is further noted that on December 9, 2005, in *Delmas v. Gonzalez*, 2005 WL 3926090 (Case No. [REDACTED] S.D. Fla),<sup>22</sup> 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

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

<sup>17</sup> VTVPA § 1503.

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

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

<sup>20</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law No. 109-162, (VAWA 2005).

<sup>21</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).

<sup>22</sup> The director mistakenly refers to this case as "Matter of Delmar" and as a decision of the AAO.

type of battered immigrant woman Congress was concerned with when enacting VAWA or the VTVPA and, therefore, permissibly construed the statute to deny the instant petition.<sup>23</sup>

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. In this instance, the petitioner's status as a K-3 nonimmigrant is not a relevant factor in determining the petitioner's eligibility. Based upon the above discussion, we do not find that the director erred in denying the instant petition.

Beyond the director's decision, we further find that the record also fails to establish that the petitioner is eligible for immediate relative classification, 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)(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 was divorced from her former abusive citizen spouse and remarried to another citizen prior to the filing of the petition, she is ineligible for immediate relative classification based on her former relationship.

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.

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<sup>23</sup> *Id.* at 3.