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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

By

FILE:

EAC 05 117 52683

Office: VERMONT SERVICE CENTER

Date: DEC 02 2008

IN RE:

Petitioner:

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)

ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien battered or subjected to extreme cruelty by a lawful permanent residence spouse.

Section 204(a)(1)(B)(iii) of the Act provides that an alien who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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)(B)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(iii)(II).

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

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

In this matter, the director initially denied the petition on August 9, 2005, finding that the evidence was not sufficient to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a citizen or lawful permanent resident of the United States. In its May 8, 2006 decision on appeal, the AAO concurred with the director's determination on the issue of the failure to establish the necessary qualifying relationship. The AAO remanded the petition, however, for issuance of a Notice of Intent to Deny (NOID) the petition in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). The AAO also instructed the director to request further information regarding the petitioner's good moral character. Upon remand, the director issued a NOID on July 5, 2006, which informed the petitioner, through counsel, that she had failed to establish a qualifying relationship as the spouse, intended spouse, or former spouse of a citizen or lawful permanent resident of the United States and good moral character. Counsel for the petitioner submitted further evidence regarding the petitioner's good moral character and submitted the same assertions in regard to the petitioner's qualifying relationship as had been submitted in the initial appeal. The director determined that the newly submitted evidence regarding the petitioner's good moral character was sufficient to establish her good moral character. Upon review of counsel's assertions in response to the NOID, the director noted that the Form I-360 petition was denied because the petitioner's spouse had lost his lawful permanent resident status. The director noted that the petitioner's admission to the United States and the status of her Form I-130, Petition for Alien Relative were not relevant to the denial of the Form I-360. The AAO concurs with the director's determination

that the record does not show a qualifying relationship existed within two years of filing the Form I-360, the subject petition of this appeal, as required by statute.

The AAO reiterates that section 204(a)(1)(B)(ii) of the Act requires that the petitioner establish that she is married to a permanent resident at the time of the filing of the Form I-360 petition with certain exceptions. The exceptions regard the loss of the spouse's lawful permanent resident status during the two-year period prior to filing the Form I-360 and that the loss of status was due to an incident of domestic violence. *See* section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. In this matter, as previously determined, the petitioner's spouse lost his permanent resident status on August 30, 1994, when a final order of deportation was issued, a date prior to his marriage to the petitioner on February 25, 1997. The petitioner filed this petition on March 17, 2005. Although the record reflects that the petitioner's spouse was, at one time, a lawful permanent resident of the United States, he lost his immigrant status on August 30, 1994, more than two years prior to marrying the petitioner and more than ten years prior to the petitioner's filing of the petition. Accordingly, the petitioner has not established that she was the spouse of a lawful permanent resident at the time of the filing of the instant petition.

**The petition will be denied and the appeal dismissed for the above stated reason.** 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. The petitioner has not sustained that burden.

**ORDER:** The director's January 10, 2007 decision is affirmed. The petition is denied.