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

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 03 229 50798

IN RE: Petitioner:
Beneficiary: [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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a 42-year old native and citizen of Grenada 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 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 divorced his citizen spouse more than two years prior to the filing of the petition.

On appeal, the petitioner submits a brief.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

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 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 divorced his citizen spouse more than two years prior to the filing of the petition. The director determined and the AAO concurs that 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.

According to the evidence on the record, the petitioner married his United States spouse on March 13, 1997 and divorced on January 18, 2001.[1] The petitioner filed the Form I-360 self-petition on July 18, 2003, two and one-half years after the marriage was terminated.

On appeal, the petitioner asserts that he did not file earlier because he was awaiting the adjudication of a Form I-130 and Form I-485 that he states he filed in 1997.[2]

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. Awaiting the adjudication of pending applications and petitions is not an exception. He divorced his allegedly abusive spouse more than two years prior to the filing of the instant petition.

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.

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[1] It is noted that the divorce decree was amended in handwriting to reflect that the divorce was final in 2001 rather than 2000.

[2] The petitioner provides no evidence to corroborate his assertion that he previously filed a Form I-485 and a Form I-130. A check of the CIS database fails to produce evidence of these filings.