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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

A2

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 08 2010

IN RE: Petitioner: [redacted]

PETITION: Petition for Immigrant Battered Spouse Pursuant to the First Section of Public Law 89-732 of the Immigration and Nationality Act, (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 the first section of Public Law 89-732 of the Immigration and Nationality Act (the Act), (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act (CAA)), as a spouse who has been battered or subjected to extreme cruelty by her Cuban parolee spouse.

The director denied the petition, finding that the application for permanent residence under the CAA filed by the petitioner's spouse was denied on May 10, 2007, and thus the petitioner did not establish that she had the requisite qualifying relationship with a U.S. lawful permanent resident.

On appeal, counsel for the petitioner submits a brief.

Section 101(a)(51)(D) of the Act defines "VAWA self-petitioner" as:

> [A]n alien . . . who qualifies for relief under the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

Section 1 of Public Law 89-732 of the Act, (8 U.S.C. 1255 note) states, in pertinent part:

> Notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the [Secretary of Homeland Security], in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. . . . The provisions of this Act [notes to this section] shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act [notes to this section] without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the [Secretary of Homeland Security] shall apply the provisions of section 204(a)(1)(J) [8 USCS § 1154(a)(1)(J)]. . . .

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Venezuela who was admitted into the United States on January 7, 1996, as a B-2

nonimmigrant visitor. On March 28, 2001, the petitioner married W-B-[1], a native and citizen of Cuba, in Orlando, Florida. On April 1, 2001, the petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1 of the CAA based on her marriage to W-B-. On November 24, 2004, the District Director denied the I-485 application based on the denial of W-B-'s I-485 application on November 5, 2004, and certified his decision to the AAO. Specifically, the director determined that W-B- was convicted of crimes involving moral turpitude and was ineligible for adjustment of status pursuant to section 1 of the CAA. On November 7, 2005, the AAO withdrew the director's November 24, 2004 decision and remanded the record to the director to await the decision on W-B-'s eligibility to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, under section 212(h) of the Act, prior to making a decision on the petitioner's case. The petitioner subsequently filed a Form I-601, which was approved on September 28, 2006. On May 10, 2007, the Interim District Director denied the petitioner's I-485 application based on the May 10, 2007 denial of W-B-'s I-485 application, and certified her decision to the AAO. On April 3, 2008, the AAO affirmed the Interim District Director's May 10, 2007 decision.

The petitioner filed the instant Form I-360 on January 31, 2008, and on October 9, 2008, filed an I-485 application based on the filing of the instant petition. On May 14, 2009, the director denied the I-485 application because the petitioner had not established that an immigrant visa was immediately available as required by section 245 of the Act. On October 2, 2009, the director denied the instant petition, finding that the application for permanent residence under the CAA filed by the petitioner's spouse was denied on May 10, 2007, and thus the petitioner did not establish that she had the requisite qualifying relationship with a U.S. lawful permanent resident. Counsel timely appealed.

On appeal, counsel for the petitioner asserts that the petitioner is eligible for the classification because she is married to a Cuban national, as defined under the Cuban Adjustment Act (CAA). Counsel also asserts that the director's decision is contrary to Congressional intent, and the director "fails to take into account the changes made to the CAA and the INA pursuant to the VAWA provisions enacted through [VAWA 2005],"[2] which provides for the adjustment of status of the abused non-Cuban spouse "independent of the Cuban national's ability to acquire such status under the CAA." Counsel also asserts that the director erroneously applied *Matter of Quijada-Coto*, 13 I&N Dec. 740 (BIA 1971), which is not applicable to VAWA applicants.

The AAO disagrees with counsel's assertions. Counsel's argument that under [VAWA 2005] "the abused non-Cuban spouse qualifies for adjustment of status independent of the Cuban national's ability to acquire such status under the CAA," is not persuasive. On January 5, 2006, Congress enacted VAWA 2005, which made further amendments to provisions related to battered spouses and children. Congress, however, made no provisions for an alien to self-petition, who, in this case, is not the spouse of a lawful permanent resident of the United States. The language of section 1 of the CAA clearly indicates that the VAWA self-petitioner's Cuban spouse must be admissible to the

[1] Name withheld to protect individual's identity.
[2] Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law No. 109-162, (VAWA 2005).

United States and adjusted as a lawful permanent resident. As discussed above, on May 10, 2007, the Interim District Director determined that W-B- is inadmissible to the United States and therefore not eligible to adjust his status to lawful permanent resident. As such, the petitioner did not establish that she had the requisite qualifying relationship with a U.S. lawful permanent resident.

As noted by the director, *Matter of Quijada-Coto*, 13 I&N Dec. 740 (BIA 1971) discusses Congressional intent pertaining to Public Law 89-732. Specifically, the BIA stated:

> After careful consideration, we conclude that Congress did not intend to apply the benefits of the Act of November 2, 1966 [Public Law 89-732] to the spouse of an alien described in the Act, when the alien himself has been denied adjustment of status under the Act.

Matter of Quijada-Coto, 13 I&N Dec. 740 (BIA 1971) underlines the fact that Congress intended that the VAWA self-petitioner under section 101(a)(51)(D) of the Act have the requisite qualifying relationship with a U.S. lawful permanent resident. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with her Cuban spouse. She is consequently ineligible for immigrant classification pursuant to section 1 of the CAA and her petition must be denied.[3]

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

[3] We note that the petitioner is also ineligible for classification as a battered spouse pursuant to section 204(a)(1)((A)(iii) or (B)(ii) of the Immigration and Nationality Act, as her spouse is neither a U.S. citizen nor lawful permanent resident.