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

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 13 2010

EAC 09 202 50919

IN RE: Petitioner: [redacted]

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

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

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

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States 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 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

On February 18, 2010, the director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. lawful permanent resident spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief. Counsel asserts that United States Citizenship and Immigration Services (USCIS) failed to consolidate the petitioner's previously filed Form I-360, Petition for Amerasian, Widow(er) and Special Immigrant, with the instant Form I-360 and preserve the petitioner's filing date of the first filed Form I-360.

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 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native of the former Soviet Union. She entered the United States on or about June 16, 1998. On March 31, 2005, the petitioner married Y-K-[1], the claimed abusive United States lawful permanent resident spouse in the State of New York. On November 21, 2006, the New York State Supreme Court in Kings County issued a Judgment of Divorce dissolving the marriage. On July 13, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Qualifying Relationship

[1] Name withheld to protect the individual's identity.

The director determined that the petitioner had not established a qualifying relationship with Y-K- as the marriage had been dissolved more than two years prior to the petitioner's filing of the Form I-360.

As noted above, counsel for the petitioner asserts that the petitioner's previously filed Form I-360, filed on January 29, 2007, preserves the petitioner's eligibility to seek benefits under the VAWA statute and regulations. The AAO disagrees. The previously filed Form I-360 was denied on August 7, 2008 because the petitioner had failed to establish: that she had a qualifying relationship with a U.S. lawful permanent resident; that she was eligible for immigrant classification based on a qualifying relationship; that she had resided with the U.S. lawful permanent resident; that she is a person of good moral character; and that she entered into the marriage in good faith. The issues of the matter were fully adjudicated and the petitioner did not file an appeal. The previously filed Form I-360 is not considered a placeholder for future filings of Forms I-360. The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a United States lawful permanent resident, an alien must have been the bona fide spouse of a United States lawful permanent resident "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

As previously observed, the petitioner in this matter was divorced from her spouse for more than two years at the time of filing the instant petition. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with her former spouse.

The petition will be denied and the appeal dismissed for the above stated reason. As always, the burden of proof in visa petition proceedings 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.