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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  
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FILE:



Office: VERMONT SERVICE CENTER

Date:

IN RE:

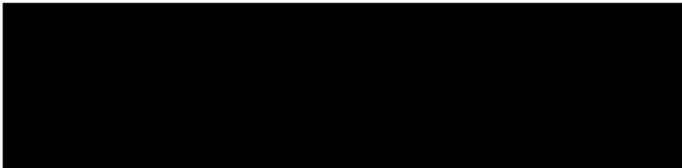
Petitioner:



NOV 10 2010

PETITION: Petition for Immigrant Abused 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:



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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that she had a qualifying relationship as the spouse of a U.S. citizen or lawful permanent resident.

On appeal, counsel submits a brief and additional documentation, including a copy of the previously submitted Stipulation and Order from the District Judge of the Eighth Judicial District Court, Clark County, Nevada, dated May 13, 2009, dismissing with prejudice the Complaint for Annulment and the proceedings therein.

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 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)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

An alien who is a widow of a United States citizen may still self-petition under this provision of the Act if the U.S. citizen spouse died within the two years immediately preceding the filing of the petition. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(aaa).

Section 204(a)(1)(J) of the Act further 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 petitioner in this case is a native and citizen of Brazil who was admitted to the United States on December 14, 2001, as a B-2 nonimmigrant visitor. On January 28, 2007, the petitioner married R-W<sup>1</sup>, a U.S. citizen, in Lake Tahoe, Nevada. On August 1, 2007, R-W- committed suicide. The petitioner filed the instant Form I-360 on July 24, 2009.

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

The director denied the petition on January 27, 2010, finding that the petitioner did not establish that she had a qualifying relationship with her late husband because their marriage was annulled on July 19, 2007.

On appeal, counsel states that the director ignored the Stipulation and Order from the District Judge of the Eighth Judicial District Court, Clark County, Nevada, dated May 13, 2009, dismissing with prejudice the Complaint for Annulment and the proceedings therein. Counsel submits additional evidence, including a copy of the previously submitted Stipulation and Order.

The language of the statute clearly indicates that an alien who is a widow of a United States citizen may still self-petition under this provision of the Act if the U.S. citizen spouse died within the two years immediately preceding the filing of the petition. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act. The May 13, 2009 Stipulation and Order vacated the Complaint for Annulment and, therefore, the petitioner was the spouse of R-W- at the time of his death in August 2007. Accordingly, we withdraw the director's determination that the petitioner did not have a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen.

The petition may not be approved, however, as the director did not address the remaining issues, including joint residency, good-faith entry into the marriage, and extreme cruelty/battery. Accordingly, the case will be remanded for the director to determine whether the petitioner qualifies for benefits under section 204(a)(1)(A)(iii) of the Act. The director must afford the petitioner reasonable time to provide evidence pertinent to her eligibility under section 204(a)(1)(A)(iii) of the Act, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's January 27, 2010 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.