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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

B9

[redacted]

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

IN RE: Petitioner: [redacted]

PETITION: Petition for Immigrant Battered 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 petitioner seeks classification as an immigrant 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 her United States lawful permanent resident spouse.

The director denied the petition because the petitioner did not establish that she had the requisite qualifying relationship as the spouse of a lawful permanent resident of the United States, and that she is eligible for immigrant classification based upon that relationship.

On appeal, counsel submits a statement and a copy of a marriage license previously submitted.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence 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).

An alien may still self-petition under this provision of the Act if the alien demonstrates that he or she "believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States." Section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(BB).

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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> *Evidence for a spousal self-petition –*

> (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

The petitioner in this case is a native and citizen of the Philippines who last entered the United States as a B-2 nonimmigrant on February 1, 2007. On July 18, 2008, the petitioner and J-Q-[1], a lawful permanent resident, were issued a License to Marry, in Fort Lauderdale, Florida.

The petitioner filed this Form I-360 on October 13, 2009. On February 1, 2010, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship and eligibility for immigrant classification based upon that relationship. On March 1, 2010, the petitioner, through counsel, timely responded with additional evidence. On April 7, 2010, the director denied the petition for lack of, *inter alia*, the requisite qualifying relationship and eligibility for immigrant classification based upon that relationship.

On appeal, counsel resubmits a copy of the petitioner's marriage license from the State of Florida showing that she and J-Q- were never legally married. Counsel asserts that the petitioner "believed that she was legally married to her husband until she was informed in 2009 that the marriage certificate issued was not recorded in the [S]tate of Florida."

Qualifying Relationship and Eligibility for Immediate Relative Classification

In her February 26, 2010 affidavit submitted in response to the director's NOID, the petitioner states, in part:

> It was my belief that I was legally married to [J-Q-] due to the fact that we went together to the marriage license bureau and signed the marriage license in front of the officials there. My husband later told me that we were legally married . . .

The statements of counsel and the petitioner are noted. It must be clarified, however, that the validity of the petitioner's marriage to J-Q- cannot be established simply because the petitioner believed the marriage was valid. Section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act refers to a marriage that is not legitimate because of the abuser's bigamy, despite a petitioner's belief that he or she had entered into a valid marriage. The language at section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act requires the performance of a marriage ceremony between the petitioner and the abuser. In this matter, no marriage ceremony was ever performed. Thus, the validity of the petitioner's marriage to J-Q- has not been established.

As previously noted, the petitioner in this case was never married to J-Q-. Accordingly, the petitioner is unable to establish that she had a qualifying relationship as the spouse of a lawful permanent resident

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

of the United States and that she is eligible for classification based upon that relationship, as required by section 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa), (cc). Thus, we concur with the director's determination that the petitioner did not establish that she had the requisite qualifying relationship as the spouse of a lawful permanent resident of the United States, and that she is eligible for immigrant classification based upon that relationship. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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.