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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]

Bq.

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 05 128 52366 SEP 27 2010

IN RE: Petitioner: [redacted]

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:

[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 service center director revoked his approval of the immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The previous decision of the AAO, dated June 1, 2010, will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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].

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), 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.
>
> (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner . . . .

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated June 1, 2010, only certain facts will be repeated as necessary here. In this case, the petitioner is a native and citizen of Bangladesh who was admitted into the United States on December 11, 2000, as a B-2 nonimmigrant visitor. On February 24, 2003, the petitioner married M-E-[1], a naturalized U.S. citizen. The director revoked the approval of the instant I-360 petition on May 1, 2009, because the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, that he is eligible for immigrant classification based upon that relationship, and that he is a person of good moral character. The director also determined that, because the petitioner had not established that he was legally free to marry M-E-, he had not established the remaining requirements of section 204(a)(1) of the Act. In its June 1, 2010 decision on appeal, the AAO withdrew the director's finding that the petitioner lacks good moral character. The AAO, however, concurred with the director's determination that the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, and that he is eligible for immigrant classification based upon that relationship. The AAO also concurred with the director's determination that, because the petitioner had not established that he was legally free to marry M-E-, he also had not established the remaining requirements of section 204(a)(1) of the Act.

At the outset, counsel's request for additional time to provide the results of a "Marriage Status search" from the Canadian authorities, is noted. A motion to reopen, however, must be supported by affidavits or other documentary evidence at the time of filing. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). Thus, any additional documentation submitted by the petitioner subsequent to the filing of the motion will not be considered. Consequently, the motion will be adjudicated based on the merits of the current record.

On motion, counsel submits a brief, and additional evidence, including a sworn statement from the petitioner, dated June 29, 2010. Counsel states, in part, that the petitioner has never been provided copies of the documentation upon which U.S. Citizenship and Immigration Services (USCIS) based its revocation of the approval of the instant petition. Counsel also states that USCIS "has not provided any evidence to contradict [the petitioner's] contentions." Counsel concludes: "We respectfully submit that the evidence submitted and the Canadian search reports to be submitted will clearly establish that [the petitioner] was married only once . . ."

In his June 29, 2010 affidavit submitted on motion, the petitioner states, in part, that he has never been married to anyone other than M-E-, and that he previously submitted documentation to show that he was never married to anyone in Bangladesh. The petitioner also states that he never authorized anyone to submit any application that listed his marital status as "married." As supporting documentation, the petitioner submits the following: a letter, dated June 28, 2010 from the Registrar of Vital Statistics of the Government of Newfoundland and Labrador, Canada,

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

confirming that a search of their marriage records for 2000, 2001 and 2002 finds no record of a marriage for the petitioner in Newfoundland and Labrador; and other requests to the Canadian authorities for a "verification of marriage" search.

The AAO acknowledges the documentation, listed above, which was submitted by the petitioner as evidence that he had a qualifying relationship as the spouse of a United States citizen, and that he is eligible for immigrant classification based upon that relationship. The additional evidence, however, does not resolve the discrepancies in the record. As discussed in detail in the AAO's June 1, 2010 decision and in the director's May 1, 2009 decision, the DOS Optional Form 156, Nonimmigrant Visa Application, signed by the petitioner on September 12, 2000, lists his marital status as married, lists his wife's name as [redacted] and lists her nationality as Bangladesh. The petitioner's signature on this application matches his passport signature and, as pointed out by the director in his decision, the petitioner's handwriting on the application matches the handwriting on his Form I-94, Departure record. Although counsel argues that USCIS "has not provided any such documentation to [the petitioner]," both counsel and the petitioner have been apprised of the derogatory evidence in extensive detail in the AAO's June 1, 2010 decision and in the director's May 1, 2009 decision. Neither counsel nor the petitioner, however, has submitted any evidence that resolves the discrepancies in the record. Accordingly, the petitioner has failed to demonstrate that his marriage to M-E- was a valid marriage. Therefore, he is unable to establish that he had a qualifying relationship as the spouse of a United States citizen and that he is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

Upon review of totality of the evidence, the petitioner has not demonstrated that he had a qualifying relationship as the spouse of a U.S. citizen and that he is eligible for immigrant classification based upon that relationship. In addition, as stated by the director in his decision, because the petitioner has not established that he was legally free to marry M-E-, he also has not established the remaining requirements of section 204(a)(1) of the Act. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and the revocation of the petition's approval must stand.

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 previous decision of the AAO, dated June 1, 2010, will be affirmed and the petition's approval will be revoked.

ORDER: The decision of the AAO, dated June 1, 2010, is affirmed. The petition's approval is revoked.