

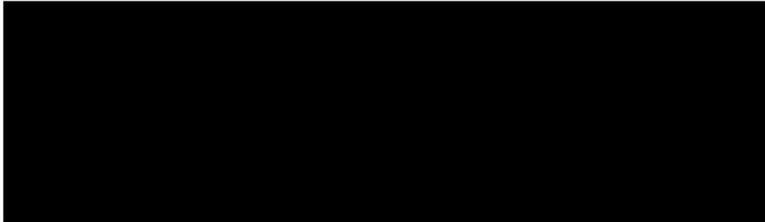
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]
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Office: VERMONT SERVICE CENTER

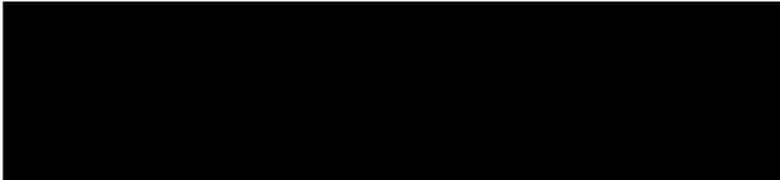
Date: SEP 13 2010

IN RE:



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)

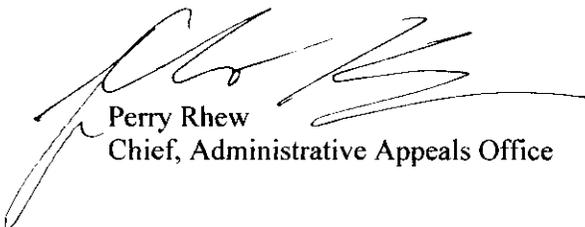
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. Upon reconsideration, the previous decision of the AAO will be affirmed.

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.

The director denied the petition on the basis of his determination that the petitioner had failed to establish her eligibility for immigrant classification based upon a qualifying relationship with Z-A-¹, her United States citizen husband, because she failed to properly terminate her prior marriage before marrying him. The record establishes that although Z-A- and the petitioner married on October 22, 2002, the petitioner's divorce from her previous husband was not effective until November 1, 2002.

Previous counsel filed a timely appeal, which the AAO dismissed. On motion, newly-retained counsel submits a five-sentence argument on the Form I-290B, Notice of Appeal or Motion; copies of two documents relating to the petitioner's prior divorce that were already contained in the record; and an excerpt from the 1953 Hindu Marriage Act of India. As the facts, procedural history, and statutory and regulatory authorities of this case were set forth fully in the previous decisions of the director and the AAO, we will only repeat certain facts and authorities here as necessary.

On motion, counsel cites to a document relating to a September 27, 2002 hearing on the petitioner's divorce from her first husband (HMA 651/2002) and states that according to this document, the effective date of the petitioner's divorce was October 16, 2002, and not November 1, 2002. Counsel, however, is incorrect. The document referenced by counsel does not state that the divorce became effective October 16, 2002; rather, that is the date the document states as scheduled for a subsequent hearing. The dissolution decree and judgment are clearly dated November 1, 2002, consistent with the excerpt from the 1953 Hindu Marriage Act of India submitted by counsel on motion. As counsel makes no other assertions in support of his motion, the record still fails to establish that the petitioner's divorce from her previous husband was valid and recognized by the laws of India at the time she married Z-A-.

The petitioner has failed to overcome the AAO's grounds for dismissal of the appeal and has not established that she is eligible for immigrant classification based upon a qualifying relationship with a citizen of the United States. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

¹ Name withheld to protect individual's identity.

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Page 3

ORDER: The AAO's decision of January 26, 2009 is affirmed. The petition remains denied.