

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

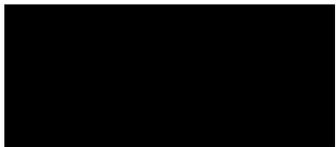
PUBLIC COPY

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**

Bq



FILE: [Redacted]
EAC 08 078 50313

Office: VERMONT SERVICE CENTER

Date: **AUG 03 2010**

IN RE: Petitioner:



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.

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

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 because the record failed to establish that the petitioner had a qualifying relationship with her former husband within two years of filing this petition, as required by statute.

On appeal, counsel states, in part that the instant petition “is an extension of the first [petition].” Counsel also states: “Requirement one cannot be isolated in and of itself separated from the other requirements.”

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 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).

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 the Dominican Republic who married D-W¹, a U.S. citizen, in the Dominican Republic, on February 13, 2003. On March 5, 2003, D-W- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner that was approved on September 3, 2003. The petitioner entered the United States as the K-3 spouse of a U.S. citizen on August 22, 2003. On February 2, 2004, the petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status, which was denied by the district director on April 14, 2005, upon the withdrawal by D-

¹ Name withheld to protect individual’s identity.

W- of the I-130 petition that he had filed on the petitioner's behalf. On October 18, 2004, the marriage of the petitioner and D-W- was dissolved by order of the Supreme Court Justice of the New York State Supreme Court at the Orange County Courthouse in Goshen, New York.² On June 27, 2005, the petitioner filed the first Form I-360, which was denied by the director on March 8, 2007, as the petitioner did not establish the requisite battery or extreme cruelty and good-faith entry into the marriage.

The petitioner filed this Form I-360 on January 15, 2008. The director issued a Notice of Intent to Deny (NOID) the petition on February 24, 2009, that notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish, *inter alia*, the requisite qualifying relationship and good-faith entry into the marriage. The director denied the petition on April 24, 2009, finding that the petitioner did not establish that she had a qualifying relationship with her former husband due to the dissolution of their marriage over two years before the petition was filed.

On appeal, counsel states, in part that the instant petition "is an extension of the first [petition]." Counsel also states: "Requirement one cannot be isolated in and of itself separated from the other requirements."

The AAO disagrees with counsel's assertion that the instant petition is an extension of the previously filed petition. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The AAO also disagrees with counsel's assertion that "one [eligibility requirement] cannot be isolated in and of itself separated from the other requirements." The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a U.S. citizen, an alien must have been the bona fide spouse of a U.S. citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 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). As previously noted, the petitioner in this case 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 husband. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) 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.

² Index No. 2004-4174.