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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 16 2007

EAC 06 096 50084

IN RE: Petitioner: [redacted]

PETITION: Petition for Immigrant Battered 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:

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.

Robert P. Wiemann, 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 petitioner did not establish that she had a qualifying relationship with her former husband.

Counsel timely appealed. On the Form I-290B, Notice of Appeal, counsel indicated that he would submit a brief or evidence to the AAO within 30 days. Counsel dated the appeal June 20, 2006. On January 22, 2007, counsel notified the AAO that he never filed a brief or evidence in support of the appeal as he indicated on the Form I-290B.

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 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Armenia who entered the United States on October 14, 1992, as a nonimmigrant visitor (B-2). On November 12, 1992, the petitioner married M-O-[1], who was a lawful permanent resident of the United States at that time. M-O- subsequently filed a Form I-130, immigrant petition

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

for alien relative, on the petitioner's behalf that was approved on March 31, 1993. On January 26, 1998, the petitioner filed a Form I-485, application to adjust status, based on the approved Form I-130 petition. On August 20, 1998, M-O- was naturalized. On August 21, 1998, the Los Angeles, California Superior Court dissolved the petitioner's marriage to M-O-.

On July 14, 2000, the petitioner was interviewed in connection with her adjustment application at the Los Angeles District Office. The adjudication officer gave the petitioner a notice informing her that her adjustment case would remain pending due to the need for additional review. On October 16, 2002, the Walk In Unit of the district office gave the petitioner a letter requesting her to submit a Form I-360 within 12 weeks. On September 3, 2003, the district director denied the petitioner's Form I-485 application due to her failure to submit a Form I-360, as requested. On October 1, 2003, counsel filed a Motion to Reopen and a Form I-360. On August 19, 2005, the district director granted the motion, reopened the petitioner's adjustment case and forwarded her Form I-360 to the Vermont Service Center for adjudication.

On May 19, 2006, the director, Vermont Service Center, denied the Form I-360 because it was filed over two years after the petitioner's marriage was legally terminated. That same day, the director denied the petitioner's Form I-485 application.

On appeal, counsel contends that the delay in filing the Form I-360 was due to the erroneous actions of the district office and that the petition "should be accepted" under the doctrine of equitable estoppel. Counsel is misguided. The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of Citizenship and Immigration Services (CIS) from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.[2]

[2] On appeal, counsel also fails to explain why he proceeded to file a Form I-360 for the petitioner on October 1, 2003, over three years after her eligibility period had expired. In his motion to reopen the petitioner's adjustment case, which was based on his concurrent submission of the Form I-360, counsel makes no mention of equitable estoppel or any other reason why the two-year limitation at section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act does not apply to the petitioner's case. Counsel's omission indicates that he himself may not have been aware of the filing requirement and may have misinformed the petitioner of her eligibility to file a Form I-360 at such a late date.

Qualifying Relationship

Immigrant classification under section 204(a)(1)(A)(iii) of the Act may be granted to aliens who have divorced their abusive spouses, but only if the divorce is connected to the abuse and the self-petition is filed within two years of the legal termination of the marriage. 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). In this case, the petitioner's marriage to her former husband was legally terminated on August 21, 1998. Although the record indicates that the dissolution of the petitioner's marriage was connected to her former husband's abuse, this petition was not filed until October 1, 2003, over five years after the legal end of the petitioner's marriage. Consequently, the petitioner did not have a qualifying relationship with her former husband, as required by section 204(a)(1)(A)(iii) (II)(aa)(CC)(ccc) of the Act.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive spouse. Because the petitioner did not have a qualifying relationship with her former husband at the time this petition was filed, she was also ineligible for immediate relative classification based on such a relationship.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petitioner has not established that she had a qualifying relationship with her former husband and that she was eligible for immediate relative classification based on such a relationship. Consequently, the petitioner is ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.