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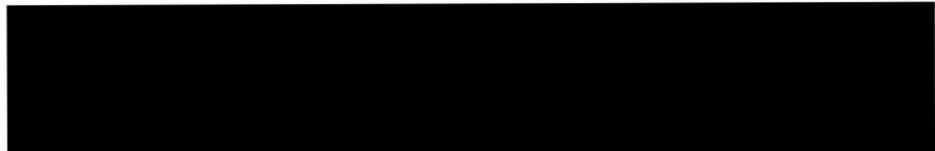
Office: VERMONT SERVICE CENTER

Date: JAN 24 2007

EAC 06 024 52888

IN RE:

Petitioner:



PETITION: Petition for Special 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:

SELF-REPRESENTED

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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant pursuant to 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 her United States citizen spouse.

The director denied the petition because the record failed to establish that the petitioner had a qualifying relationship with her former husband.

The petitioner submitted a timely appeal.

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).

The petitioner in this case is a native and citizen of Honduras who indicates on the Form I-360 that she entered the United States on or around February 1990 without inspection. On September 10, 1994, the petitioner married T-G¹, a U.S. citizen, in Orange County, Florida. The petitioner's marriage to her citizen spouse was dissolved on January 30, 2003, by order of the Circuit Court Judge of the Ninth Judicial District in and for Orange County, Florida. The petitioner filed this Form I-360 on October 20, 2005. The director issued a request for evidence (RFE) on February 28, 2006 and a Notice of Intent to Deny (NOID) on May 23, 2006. The petitioner timely responded to both of these requests. After reviewing all of the evidence, including the evidence submitted in response to the RFE and NOID, the director denied the petition, finding that as the petitioner was divorced from her citizen spouse for more than two years at the time of filing, she failed to establish that she had a qualifying relationship as the spouse or former spouse of a United States citizen. The petitioner filed a timely appeal on August 22, 2006.

On appeal, the petitioner does not dispute the fact that she divorced her spouse or that her divorce took place more than two years prior to filing the I-360 petition. Instead, the petitioner claims that she was delayed in filing because she was given "misleading" information by a Service officer who told her "to wait for an appointment notice of the Immigration Court in which I was going to explain [her] case to a Judge" We cannot refute the petitioner's claim regarding the reason why she waited to file her Form I-360 petition. However, regardless of the reason for why the petitioner waited for more than two years after her divorce to file her petition, her explanation does not overcome the plain language of the statute which requires either that

¹ Name withheld to protect individual's identity.

the petitioner be married to his or her citizen spouse at the time of filing, or if no longer married at the time of filing, that there be 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. The statute does not contain any waivers of these provisions.

As discussed above, the petitioner was not married to her spouse at the time of filing and her divorce took place more than two years prior to the filing of the Form I-360 petition. Accordingly, the petitioner has not established that she had a qualifying relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Beyond the director's decision, we further find that the record also fails to establish that the petitioner is eligible for immediate relative classification, 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 relationship to the abusive spouse. As the petitioner's marriage to her former husband was legally terminated over two years before this petition was filed, she is ineligible for immediate relative classification based on their former relationship.

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.