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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[Redacted]

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FILE: [Redacted]
EAC 99 053 53114

Office: VERMONT SERVICE CENTER

Date: **APR 20 2009**

IN RE: [Redacted]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

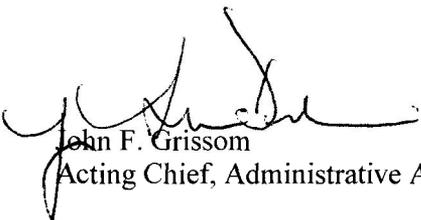
ON BEHALF OF PETITIONER:

[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.

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).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked approval of 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director revoked approval of the petition on the basis of his determination that the petitioner had failed to establish that she has a qualifying relationship with a lawful permanent resident of the United States.

Counsel filed a timely appeal on January 8, 2008.

Section 204(a)(1)(B)(ii)(I) of the Act states, in pertinent part, the following:

- (I) An alien who is described in subclause (II) may file a petition with the [Secretary of Homeland Security] under this clause for classification of the alien . . . if the alien demonstrates to the [Secretary of Homeland Security] that—
 - (aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and
 - (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.
- (II) For purposes of subclause (I), an alien described in this subclause is an alien—
 - (aa) (AA) who is the spouse of a lawful permanent resident of the United States; or
 - (BB) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or
 - (CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

- (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or
- (bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;
- (bb) who is a person of good moral character;
- (cc) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 1153(a)(2)(A) of this title or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and
- (dd) who has resided with the alien's spouse or intended spouse.

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].

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under . . . clause (ii) or (iii) of subparagraph (B) . . . , 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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. . . .

The petitioner is a citizen of Colombia who married F-O-¹ on November 30, 1994. F-O-, who represented himself to be a lawful permanent resident of the United States, filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on June 13, 1995. The Form I-130 was approved on September 23, 1995.

The petitioner filed the instant Form I-360 on December 3, 1998, and it was approved on May 13, 1999. However, USCIS records establish that F-O-'s status as a lawful permanent resident of the United States was terminated on or around September 28, 1980.² He was therefore, no longer a permanent resident of the United States at the time he filed the Form I-130 on behalf of the petitioner in 1995, and the Form I-130 was approved in error. Nor was the petitioner the spouse of a lawful permanent resident of the United States when the Form I-360 was filed.

On October 17, 2007, the director issued a notice of intent to revoke (NOIR) approval of the Form I-360. The director notified the petitioner that questions regarding her eligibility to file a Form I-360 had been raised since the time of the approval of the petition. Specifically, the director notified the petitioner that since F-O- had not been a lawful permanent resident of the United States since September 28, 1980, she was therefore not the spouse of a lawful permanent resident of the United States when the Form I-360 was filed in 1998.

Counsel responded to the director's NOIR on November 9, 2007. In her November 6, 2007 letter, counsel stated that the petitioner had no knowledge that F-O- had lost his status as a lawful permanent resident when she filed her Form I-360, and that the petitioner had become, once more, the innocent

¹ Name withheld to protect individual's identity.

² Due to confidentiality issues, no further information will be provided.

victim of her husband's deceitful character. Counsel stated that it was her understanding that F-O- was in removal proceedings, and that he may have been applying "for some form of relief from removal." Counsel requested that, although she was aware of the fact that the law as it currently exists cannot help the petitioner, USCIS hold the petitioner's petition in abeyance until F-O-'s removal proceedings were terminated, and/or his status as a lawful permanent resident of the United States reinstated. According to counsel, F-O-'s hearing was scheduled for April 3, 2008.

The director revoked approval of the Form I-360 on December 11, 2007. In his decision, the director stated that the petitioner is statutorily ineligible for the benefit being sought, and that counsel had provided no documentation to establish the petitioner's eligibility.

In her January 7, 2008 letter in support of the appeal, counsel again requests that the petitioner's case be held in abeyance until F-O-'s removal proceedings are terminated, and/or his status as a lawful permanent resident of the United States is reinstated. Counsel notes the compelling factors present in the petitioner's case, particularly the abuse from F-O- that she suffered. Counsel notes again F-O-'s April 3, 2008 hearing before the immigration court.

The AAO has conducted a *de novo* review of the entire record of proceeding, and has also reviewed USCIS records pertaining to F-O-. Although the director did not hold the petitioner's case in abeyance as requested, the AAO notes that due to the timeframes involved in adjudicating the Form I-290B, the petitioner's appeal was, nonetheless, not adjudicated prior to F-O-'s April 3, 2008 hearing.

Current USCIS records do not indicate that F-O-'s status as a lawful permanent resident of the United States has been reinstated. The record, therefore, fails to establish that the petitioner had a qualifying relationship with a lawful permanent resident of the United States, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act. As the petitioner has not demonstrated a qualifying relationship as the spouse of a lawful permanent resident pursuant to section 204(a)(1)(B)(ii) of the Act, she is also not eligible for preference immigrant classification as an immediate relative based on such a relationship, as required by section 204(a)(1)(B)(ii) of the Act. Accordingly, the AAO will not disturb the director's denial of the petition.

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.

ORDER: The appeal is dismissed. Approval of the petition is revoked.