



U.S. Citizenship
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Services

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APR 28 2009

FILE:

EAC 07-111-51569

Office: VERMONT SERVICE CENTER

Date:

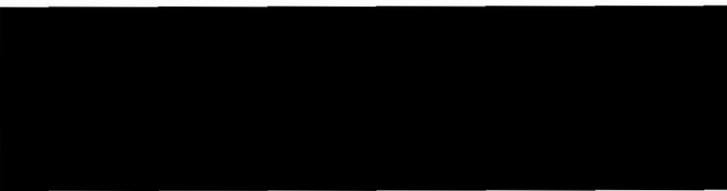
IN RE:

Petitioner:



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

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).

John F. Grissom
Acting 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 classification as a special immigrant pursuant to section 204(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1) as the “Self-petitioning Spouse of Abusive HRIFA-eligible Alien.” The petitioner, through counsel, submitted a Form I-360 Petition on March 12, 2007. The director denied the petition on November 28, 2007. The denial was based on the director’s finding that the petitioner’s spouse had lost his lawful permanent resident status in the United States on April 28, 2004 and, therefore, a qualifying relationship did not exist within two years of filing the I-360 Petition, as required by statute.

The petitioner, through counsel, filed a timely Motion to Reconsider or in the alternative, Appeal on December 29, 2007; the Motion to Reconsider was denied on September 18, 2008; and the appeal is now before the AAO. While we note that the director erred in concluding that the petitioner’s spouse lost his lawful permanent status on April 28, 2004, as the record indicates that he was never granted such status, we concur with the director’s decision that the petitioner did not have the requisite qualifying relationship and is therefore not eligible for the benefit sought.

On her Form I-290B, Notice of Appeal or Motion, the petitioner, through counsel, states that the director should approve her I-360 Petition because, “As the spouse of a formerly HRIFA-eligible alien, [she] is eligible for relief pursuant to section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act (“HRIFA”).” Counsel asserts that the I-360 Petition should have been adjudicated as a HRIFA self-petition rather than under section 204(a) of the Act. Counsel is mistaken. HRIFA provided for the adjustment of status to lawful permanent residence in the United States of certain Haitian nationals under section 245 of the Act; not under section 204(a) of the Act; the appropriate form to apply for such a benefit is Form I-485, Application to Adjust Status. The record of proceedings shows that the petitioner did in fact file an I-485 Application, and a decision was issued to the petitioner by U.S. Citizenship and Immigration Services (USCIS) on April 28, 2004. The decision indicates that the petitioner filed for adjustment of status under HRIFA as a dependent spouse on May 31, 2002, and an interview was scheduled for February 4, 2004. Her husband’s application for adjustment of adjustment of status under HRIFA was denied, however, on February 3, 2004; and, as the petitioner was not eligible to adjust status as a dependent spouse or as an applicant in her own right, her application was subsequently denied.

Regarding the instant appeal of the denial of her I-360 Petition, the relevant law is found at section 204(a) of the Act. The petitioner must establish, *inter alia*, (1) that she had a qualifying relationship with either a U.S. citizen or lawful permanent resident and (2) that she was eligible for immediate relative classification based on such a relationship. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II); Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II). The petitioner does not claim, and the record does not show, that the

petitioner's spouse was a citizen or lawful permanent resident of the United States.

The petitioner did not establish that she had a qualifying relationship with a U.S. citizen or lawful permanent resident husband and was eligible for immediate relative classification based on such a relationship. Consequently, she is ineligible for immigrant classification pursuant to section 204(a)(1)(A) and section 204(a)(1)(B) 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.