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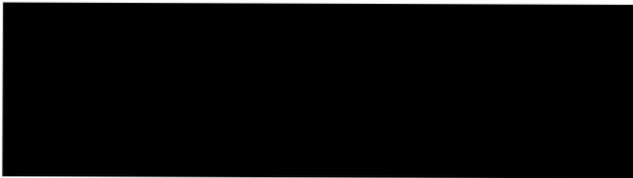
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

B9



AUG 04 2009

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:  
EAC 08 034 50050

IN RE: [REDACTED]

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:

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 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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that he had a qualifying relationship with the citizen of the United States.

Counsel filed a timely appeal on April 13, 2009.

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).

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].

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 Ghana who entered the United States on or around July 2, 1995. He married T-D-,<sup>1</sup> a citizen of the United States, on May 2, 1996 in Worcester, Massachusetts. T-D- and the petitioner divorced on June 20, 2006. The petitioner married S-Q-,<sup>2</sup> also a citizen of the United States, on September 16, 2006. S-Q- died on July 6, 2007.

The petitioner filed the instant Form I-360 on November 9, 2007, based upon the abuse to which he was allegedly subjected by T-D- during their marriage. The director issued a request for additional evidence on December 17, 2008, which notified the petitioner of deficiencies in the record and afforded him the opportunity to submit additional evidence to establish that he had a qualifying relationship, as well as information to establish that he is a person of good moral character. The petitioner responded on February 18, 2009.

After considering the evidence of record, the director denied the petition on March 25, 2009.

**Qualifying Relationship and Eligibility for Classification as an Immediate Relative**

The AAO agrees with the director's determination that the petitioner has failed to demonstrate the existence of a qualifying relationship with T-D-, as the petitioner's remarriage after their 2006 divorce precludes such a determination.

*The petitioner's remarriage prior to filing the Form I-360 precludes its approval.*

The petitioner has failed to demonstrate the existence of a qualifying relationship, as well as his eligibility for immigrant classification as an immediate relative on the basis of such a relationship. Remarriage prior to the filing of the Form I-360 precludes its approval. In arriving

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> Name withheld to protect individual's identity.

at this conclusion, the AAO finds useful a review of the history of abused spouse immigrant petitions.

*The 1994 amendments to section 204 of the Act, 8 U.S.C. § 1154*

Congress first granted an abused spouse the ability to self-petition in 1994, when it enacted the *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. 103-322, 108 Stat. 1796 (Sep. 13, 1994). Section 40701, located in Subtitle G, amended section 204 of the Act, to permit an abused spouse and children of a United States citizen or lawful permanent resident to file a petition for immigrant status. Congress observed the following:

Under current law only the United States citizen or lawful permanent resident spouse is authorized to file a relative petition, and this spouse maintains full control over the petitioning process. He or she may withdraw the petition at any time for any reason. The purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.<sup>3</sup>

Under the amended section 204 of the Act, an abused alien spouse would no longer have to rely on her abusive U.S. citizen or lawful permanent resident spouse to petition for immigrant status on her behalf.

On March 26, 1996, the legacy Immigration and Naturalization Service (INS), predecessor to the USCIS, promulgated an interim rule to implement the changes mandated by section 40701 of the *Violent Crime Control and Law Enforcement Act of 1994*.<sup>4</sup> The rule outlined the various provisions for abused spouses of U.S. citizens and lawful permanent residents to file a self-petition. In explaining the interim rule, the legacy INS stated the following:

The rule further provides, however, that a pending spousal self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser.

The implementing regulatory language at 8 C.F.R. § 204.2(c)(1)(ii) states the following:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or

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<sup>3</sup> See H.R. Rep. 203-395, available at 1993 WL 484760 at p. 41.

<sup>4</sup> See 61 FR 13061 (Mar. 26, 1996), available at 1996 WL 131508.

divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

Finally, the interim rule at 8 C.F.R. § 205.1(a)(3)(i)(E) established that approval of a self-petition made under section 204 of the Act is automatically revoked as of the date of approval:

Upon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act.

Thus, as early as 1996, section 204 of the Act was interpreted as requiring a self-petitioning abused spouse to be married at the time of filing and not remarry prior to becoming a lawful permanent resident.<sup>5</sup>

*The 2000 amendments to section 204 of the Act, 8 U.S.C. § 1154*

In 2000, Congress further amended section 204 of the Act by enacting the *Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). Division B of that Act contained the *Violence Against Women Act of 2000* (VAWA 2000). Pursuant to VAWA 2000 and the VTVPA, seven groups of battered aliens became eligible to self-petition for classification as immediate relatives or preference immigrants under sections 204(a)(1)(A)(iii) or (iv), or 204(a)(1)(B)(ii) or (iii) of the Act.<sup>6</sup>

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<sup>5</sup> In a policy memo from T. Alexander Aleinikoff, Executive Associate Commissioner, entitled "Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents," (April 16, 1996), the legacy INS Office of Programs emphasized the regulatory requirement that "[a] pending spousal self-petition will be denied or the approval of a spousal self-petition revoked, however, if the self-petitioning spouse remarries before he or she becomes a lawful permanent resident."

<sup>6</sup> Group 1 — battered alien spouses of U.S. citizens or lawful permanent residents (LPR). Group 2 — alien spouses whose USC or LPR children are being battered by the U.S. citizen or LPR spouse. Group 3 — alien children battered by their U.S. citizen or LPR parent. Group 4 — divorced battered spouses of U.S. citizens or LPR who demonstrate a connection between the abuse suffered and the divorce and who file a petition within 2 years of the divorce. Group 5 — battered widowed spouses of U.S. citizens who file a petition within 2 years of the date of U.S. citizen's death. Group 6 — battered alien spouses of former U.S. citizens or LPRs spouse and who file a petition within 2 years of the date of loss. Group 7 — battered alien children of former U.S. citizens or LPRs and who file a petition within 2 years of the date of loss. See VAWA §§ 40701-02; VTVPA §§ 1503(b) and (c).

The Battered Immigrant Women Protection Act of 2000 is contained within the VTVPA.<sup>7</sup> In VTVPA § 1502(a), Congress made three findings. First, it found that the goal of *VAWA 1994* was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships.<sup>8</sup> Second, it found that providing battered immigrant women and children with protection from deportation freed them to cooperate with law enforcement and prosecutors, without fear that the abuser would retaliate by withdrawing or threatening to withdraw, access to an immigration benefit under the abuser's control.<sup>9</sup> Third, Congress found there are several groups of battered women and children who do not have access to the immigration protections of *VAWA 1994*.<sup>10</sup> VTVPA §§ 1503(b) & (c) amended section 204 of the Act to permit an abused alien spouse, who had already terminated her marriage to the abusive U.S. citizen or lawful permanent resident, to self-petition, provided that the alien demonstrated a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the spouse.<sup>11</sup> Prior to this amendment, a self-petitioning abused spouse was required to be married to the abusive spouse at the time of filing the petition.

In addition to the amendments contained in sections 1503(b) and (c) § 1507(b) of the VTVPA, Congress amended section 204(h) of the Act to permit an abused self-petitioning spouse *whose petition had already been approved* to remarry without having the approval of his or her petition revoked. Under the maxim of statutory construction *expressio unius est exclusio alterius*,<sup>12</sup> the fact that Congress specifically addressed the issue of remarriage in the context of revocations but did not address it elsewhere means that Congress did not intend to change any other provisions related to remarriage. Under section 204(h) of the Act, remarriage of the alien after approval of the petition would not serve as the sole basis for revocation of the petition. Congress did not refer to the issue of marriage in the other provisions of section 204 pertaining to abused spouses about the issue of remarriage.

Consequently, this interpretation of section 204 of the Act, that the remarriage of an abused spouse while his or her petition is pending served to disqualify him or her, is reasonable, given that Congress provided only that *remarriage after approval* would not disqualify the abused spouse. The inclusion of remarriage in section 204(h) of the Act as a non-disqualifying factor, after petition approval, strongly suggests that remarriage is a disqualifying factor prior to petition approval. The prohibition against using remarriage as a basis for revoking an approved petition is likely based on a desire for finality. Once the abused spouse makes a

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<sup>7</sup> VTVPA § 1501.

<sup>8</sup> VTVPA § 1502(a)(1).

<sup>9</sup> VTVPA § 1502(a)(2).

<sup>10</sup> VTVPA § 1503(a)(3).

<sup>11</sup> Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

<sup>12</sup> "Mention of one thing implies exclusion of another. When certain persons or things are specified in law . . . an intention to exclude all others from its operation may be inferred." See *Black's Law Dictionary*, 6<sup>th</sup> Edition (1990).

sufficient showing that his or her self-petition should be granted, and the petition is granted, there would not be any purpose in requiring the abused spouse to delay remarrying.<sup>13</sup>

This interpretation is also consistent with the definition of “immediate relative” at section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i), which states, in pertinent part, the following:

In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date **and only until the date the spouse remarries**. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act [i.e., the VAWA self-petitioning provisions] remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

(Emphasis added.)

Further, the AAO's interpretation is consistent with the Congressional intent of *VAWA 1994* and *VAWA 2000*. The motivation of Congress in 1994 was to provide a means for an abused immigrant spouse to obtain immigration benefits over which her abusive spouse held complete control.<sup>14</sup> Because of such control, the immigrant spouse could hardly report the abuse to the police, or seek government assistance, for fear of jeopardizing any chance to obtain lawful status in the United States. VAWA 1994 limited the abusive spouse's control by permitting the abused spouse to self-petition. However, the self-petitioning spouse was still required to be married to the abusive U.S. citizen or LPR at the time the petition was filed.<sup>15</sup> Congress found this unsatisfactory, such that in 2000, it further amended section 204 to permit an abused immigrant spouse to file a self-petition, even though the abusive marriage had been legally terminated.<sup>16</sup>

The abused spouse was required to demonstrate a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent

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<sup>13</sup> Requiring an alien to be unmarried in order to be eligible for an immigration benefit is not limited to section 204 of the Act. For example, section 203 of the Act sets forth the preference allocation for family-sponsored immigrants. The first preference is the unmarried sons and daughters of U.S. citizens. *See* Section 203(a)(1) of the Act.

<sup>14</sup> H.R. Rep. 203-395, available at 1993 WL 484760 at p.41.

<sup>15</sup> *See* 8 C.F.R. § 204.2(c)(1)(ii)(1996).

<sup>16</sup> VTPVA § 1503.

resident spouse.<sup>17</sup> Congress also provided that remarriage, after the petition had been approved, would not be a basis for revoking the petition.<sup>18</sup>

While Congress broadened the eligibility requirement to include divorced spouses filing within two years of the divorce, it decided only to include the possibility of remarriage in the section pertaining to divorced spouses that had approved petitions but had not adjusted status or entered the United States as a permanent resident. As recently as January 5, 2006, Congress enacted VAWA 2005, which made further amendments to provisions related to battered spouses and children.<sup>19</sup> Again, however, Congress made no provisions for a remarried petitioner to self-petition based upon her prior abusive marriage. The fact that in three separate amendments to the original VAWA statute Congress left alone USCIS's interpretation that remarriage prior to petition approval would result in a denial is compelling evidence that it considered the interpretation and found it an accurate view of Congressional intent. This is very significant because "[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning."<sup>20</sup>

It is further noted that on December 9, 2005, in *Delmas v. Gonzalez*, 2005 WL 3926090 (Case No. 05-21507, S.D. Fla), the District Court upheld USCIS's interpretation of the VTVPA so as to disqualify an alien who had remarried before filing a self-petition. While the AAO acknowledges that a district court's decision is not binding precedent, that decision nonetheless underlines the fact that USCIS's interpretation of the statute is reasonable. The court stated, in pertinent part, the following:

Plaintiff argues that there is no evidence that Congress intended remarriage to negate the need for protection of the abused spouse. The legislative history and context of VAWA and the VTVPA show otherwise. VAWA relief is limited to those vulnerable to abuse. The AAO apparently concluded that an abused spouse who remarries prior to filing a self-petition is not the type of battered immigrant woman Congress was concerned with when enacting VAWA or the VTVPA ad, therefore, permissibly construed the statute to deny the instant petition.<sup>21</sup>

*Ultimate finding with regard to the petitioner's remarriage.*

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<sup>17</sup> Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

<sup>18</sup> VTVPA § 1507(b), amending 8 U.S.C. § 204(h).

<sup>19</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law No. 109-162, (VAWA 2005).

<sup>20</sup> *Bledsoe v. Palm Beach County Soil and Water Conservation District*, 133 F.3d 816, 822 (11<sup>th</sup> Cir. 1998), citing *Florida National Guard v. Federal Labor Relations Authority*, 699 F.2d 1082, 1087 (11<sup>th</sup> Cir. 1983).

<sup>21</sup> *Id.* at 3.

In accordance with the above discussion, the AAO finds it apparent that Congress wished for aliens with pending petitions to be either still married to the abusive spouse, or divorced within the last two years but not married to another person at the time of filing. On appeal, counsel states that the director failed to take into consideration the death of S-Q-, the petitioner's second wife, and his subsequent status as a widower. As noted by counsel, the petitioner did not end the marriage with S-Q- voluntarily. However, the fact remains that the petitioner's marriage to S-Q- occurred after the legal termination of his marriage to T-D-. The petitioner's remarriage prior to the filing of the Form I-360 precludes a finding that the petitioner had a qualifying relationship with a citizen of the United States, and he is ineligible for immigrant classification as an immediate relative on the basis of such a relationship.

### Conclusion

The AAO concurs with the director's determination that because the petitioner remarried prior to filing the Form I-360, he has failed to demonstrate that he had a qualifying relationship with a United States citizen. Although not specifically noted by the director the AAO also notes that, because the petitioner has failed to make such a demonstration, he is ineligible for preference immigrant status as an immediate relative on the basis of such a relationship. Accordingly, the AAO will not disturb the director's decision.

For all of these reasons, the petition may not be approved. 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 petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.