

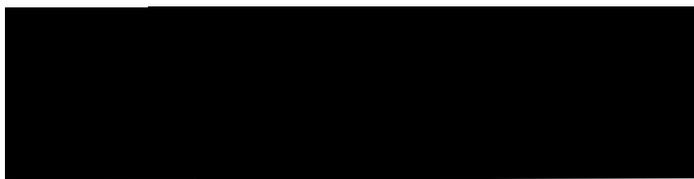
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U.S. Department of Homeland Security
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Washington, DC 20529-2090

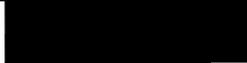


U.S. Citizenship
and Immigration
Services



49

FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 07 2009

EAC 06 156 52107

IN RE: Petitioner:



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:



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, 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. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (“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.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security]:

- (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.

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (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

There is no exception to the two-year filing period for aliens who have divorced their abusive spouses.

The director in this matter issued a Notice of Intent to Deny (NOID) the petition on September 22,

2006, notifying the petitioner that she had based her eligibility for this benefit on her marriage to N-C-¹ and that the record showed that this marriage was terminated on October 1, 2003. The petition in this matter was filed April 26, 2006 more than two years after the dissolution of the marriage. In response to the NOID, counsel for the petitioner requested that the director accept the petition within his discretion.

On December 15, 2006, the director denied the petition, observing that the petition was not filed within the prescribed time allowed by law.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal. On the Form I-290B counsel indicates that a brief and/or evidence would be submitted within 30 days. On December 16, 2008, the AAO sent a facsimile to counsel of record requesting a copy of any brief or evidence timely submitted to the AAO along with evidence of the date it was originally filed with the AAO. The AAO notified counsel that the request should not be construed as an opportunity to submit a late brief or evidence and that failure to respond to the request within five business days may result in the summary dismissal of the appeal. On December 23, 2008, the AAO received a letter from counsel dated December 19, 2008 reiterating that the petitioner's Form I-360 petition was untimely filed due to an oversight of an attorney no longer employed with counsel's firm.

Counsel's statement on the Form I-290B reads:

The Self-Petitioner met all the requirements under INA 204(a)(1), however her I-360 petition was denied based on a misinterpretation of the Act.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Counsel in this matter has not timely submitted a brief or evidence in support of the appeal. As the director determined the petitioner did not file the petition within the prescribed time allowed by law. Counsel has not identified any specific erroneous conclusions of law or statements of fact made by the director as a basis for the appeal. Counsel does not offer evidence or argument explaining how the director misinterpreted the Act. The AAO is without further evidence or argument to evaluate regarding the petitioner's failure to file the petition within the parameters of the time period established for filing Form I-360 petitions. Counsel's failure to timely submit a brief that specifically addresses the director's findings that identified the director's erroneous conclusions of law or statements of fact mandate the summary dismissal of the appeal.

Inasmuch as neither counsel nor the petitioner has specifically identified an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

¹ Name withheld to protect the individual's identity.

The petition will be denied for the stated reason set out in the director's 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 summarily dismissed.