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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

MAY 05 2009



FILE: [REDACTED]
EAC 06 100 52621

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:



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:

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.

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, initially approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. 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 United States citizen.

The director initially approved the petition on November 20, 2006. Subsequently, it came to the attention of the director that the petitioner had divorced her abusive spouse in 1998, over seven years before her Form I-360 was filed. The director issued a Notice of Intent to Revoke (NOIR) the approval of the petition, but the petitioner did not respond. Accordingly, the director revoked the approval of the petition on November 2, 2007. The petitioner timely appealed.

On appeal, the petitioner asserts that she did not know she was divorced until she went to her interview regarding her application for adjustment of status. The petitioner submits a copy of one page of a document filed in her divorce proceedings.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” U.S. Citizenship and Immigration Services (USCIS) may revoke the approval of a petition on notice “when the necessity for the revocation comes to the attention of this Service.” 8 C.F.R. § 205.2(a). For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director’s revocation of that approval.

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).

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].

Qualifying Relationship

The petitioner filed her Form I-360 on February 13, 2006 based on her marriage to M-N-¹, a U.S. citizen. On January 25, 2007, the petitioner was interviewed at the New York Field Office regarding her Form I-485, Application to Adjust Status, which she filed based on her approved Form I-360 petition. During the interview, it was discovered that the petitioner and her former spouse divorced in 1998. Based on this information, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition on May 7, 2007. The NOIR granted the petitioner 60 days to submit evidence to rebut the finding that she was divorced in 1998 and did not have a qualifying relationship with her former spouse. The petitioner did not respond to the NOIR and the director consequently revoked approval of the petition on November 2, 2007.

On appeal, the petitioner states, "I DID NOT know that I was divorce -- I found out when I came for the interview -- The interviewer asked me if I was divorced and I said I am not sure. I had asked my ex-husband several times and he told me he did not know." (emphasis and errors in original). The petitioner's alleged ignorance of her divorce judgment does not change the fact that her marriage to M-N- was legally terminated on November 17, 1998 (New York County, New York State Supreme Court, Matrimonial Part, Index Number [REDACTED]). Although the record indicates that the petitioner's divorce was connected to her former husband's abuse, the petitioner did not file her Form I-360 until 2006, over seven years after the legal termination of her marriage. The petitioner consequently did not have a qualifying relationship with her spouse pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and her petition was approved in error.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner also failed to establish the requisite eligibility for immediate relative classification based on a qualifying relationship with her former husband.² The

¹ Name withheld to protect individual's identity.

² 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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester*

regulation at 8 C.F.R. § 204.2(c)(1)(i)(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 qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that she had a qualifying relationship with M-N-. She consequently has also failed to establish that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Conclusion

The petitioner has not demonstrated that she had a qualifying relationship with her former husband and that she was eligible for immediate relative classification based on such a relationship. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition was approved in error. The director had good and sufficient cause to revoke the approval of the petition because the petitioner was divorced over seven years before her petition was filed.

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 lies 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.