U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 26 2009
EAC 06 249 50670

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 denied the immigrant visa petition and reaffirmed his decision in response to a subsequent motion. 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 denied the petition on the basis of his determination that, because her husband lost his status as a lawful permanent resident of the United States more than two years before she filed her petition, the petitioner failed to establish that she has a qualifying relationship with a lawful permanent resident of the United States, or that she is eligible for preference immigrant status on the basis of such a relationship.

Counsel filed a timely appeal on November 7, 2008.

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 may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

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; or
> >
> > (aaa) 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. . . .

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)(B)(ii) 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 Mexico who entered the United States, without inspection, in or around August 2000. She married F-G-,[1] who was then a lawful permanent resident of the United States, on July 15, 2000 in Mexico. F-G- lost his status as a lawful permanent resident of the United States on July 9, 2004.

[1] Name withheld to protect individual's identity.

The petitioner filed the instant Form I-360 on August 31, 2006. The director issued a notice of intent to deny (NOID) the petition on June 19, 2007. Previous counsel submitted a response on August 17, 2007. The director denied the petition on October 10, 2007. Current counsel filed a motion to reopen and reconsider the director's denial on December 18, 2007. The director affirmed his decision on October 7, 2008. Current counsel filed the instant appeal on November 7, 2008.

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 and, as such, has also failed to establish that she is eligible for immigrant classification as an immediate relative on the basis of such a relationship. F-G- lost his status as a lawful permanent resident of the United States on July 9, 2004, and the petitioner's failure to file the Form I-360 within two years of that date precludes its approval. Counsel states that the two-year, post-legal termination filing deadline of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act should be equitably tolled on the basis of the ineffective assistance of the petitioner's previous counsel.

I. Ineffective Assistance of Counsel

On appeal, counsel asserts that the petitioner has been the victim of the ineffective assistance of her previous counsel. However, counsel has not complied with *Matter of Compean, Banglay and J-E-C-, et al*, 14 I&N Dec. 710 (A.G. 2009), which governs cases involving claims of ineffective assistance of counsel. In *Compean*, the Attorney General held that the Constitution affords no right to counsel or effective assistance of counsel to aliens in immigration proceedings under the Sixth Amendment or the Due Process Clause of the Fifth Amendment. *Id.* at 711-727. Although the Act and the regulations do not afford aliens a right to effective assistance of counsel, either, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, reopen proceedings based on the deficient performance of an alien's prior attorney. *Id.* at 727. *Compean* establishes three elements of proof and six documentary requirements that an alien must meet to prevail on a claim of deficient performance of counsel. *Id.* Although *Compean* addresses deficient performance of counsel claims in the context of motions to reopen removal proceedings, the decision also applies to claims of deficient performance raised on direct review. *Id.* at 728 n.6.

To prevail on a deficient performance of counsel claim, the alien must demonstrate the following:

1. That counsel's failings were egregious;

2. In cases where the alien moves to reopen beyond the 30-day limit, the alien must demonstrate that he or she exercised due diligence in discovering and seeking to cure the lawyer's deficient performance; and

3. That the alien was prejudiced by the attorney's error(s). To establish prejudice, the alien must demonstrate that but for the deficient performance, it is more likely than not that the alien would have been entitled to the relief he or she was seeking.[2] *Id.* at 732-34.

In order to establish these three requirements, the alien must submit six documents:

1. The alien's detailed affidavit setting forth the relevant facts and specifically stating what the attorney did, or did not do, and why the alien was consequently harmed;

2. A copy of the agreement, if any, between the attorney and the alien. If nor written agreement exists, the alien must specify what the lawyer agreed to in his or her affidavit;

3. A copy of the alien's letter to the attorney setting forth the attorney's deficient performance and a copy of the attorney's response, if any;

4. A completed and signed complaint addressed to the appropriate State bar or disciplinary authorities;

5. Any document(s) the alien claims the attorney failed to submit; and

6. When the alien is subsequently represented, a signed statement from the new attorney attesting to the deficient performance of the prior attorney.

Id. at 735-38. If any of the latter five documents are unavailable or missing, the alien must explain why the documents are unavailable or summarize the contents of any missing documents. *Id.* at 735.

The three substantive requirements must be met for all deficient performance claims filed before and after *Compean* was issued on January 7, 2009. *Id.* at 741. For claims pending prior to January 7, 2009, the alien is not required to meet the six new documentary requirements, but must still comply with the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). *Lozada* required an alien to submit the following: (1) an affidavit attesting to the relevant facts, detailing the agreement that was entered into, what actions were supposed to be taken, and what the attorney did or did not do; (2) evidence that the attorney was informed of the allegations, given an opportunity to respond, and the attorney's response, if any; and (3) evidence that a complaint has been filed with

[2] Where the alien sought discretionary relief, the alien must not only show that he or she was eligible for such relief, but also would have merited a favorable exercise of discretion. *Matter of Compean*, 24 I&N Dec. at 734-35.

the appropriate disciplinary authorities regarding such representation or an explanation of why such a complaint was not filed. *Id.* at 638-39.

Here, the petitioner has satisfied neither *Compean* nor *Lozada*, as there is no evidence of record indicating that the petitioner has filed a complaint with the appropriate disciplinary authorities regarding the representation of her former attorney. Nor does the record contain an explanation as to why such a complaint was not filed. Further, while counsel submits a copy of a letter that she sent to the petitioner's previous attorney, there is no indication as to whether the petitioner's previous attorney submitted a response to counsel's letter. Accordingly, the petitioner has failed to establish that she was the victim of the ineffective assistance of her previous counsel.

II. Equitable Tolling

As the petitioner has failed to establish that she was the victim of the ineffective assistance of her previous counsel, she has failed to establish that the filing deadline in her case warrants equitable tolling. However, even if such a demonstration had been made, the AAO finds that the filing deadline at issue in this case is not a statute of limitations subject to the doctrine of equitable tolling. Rather, it is a statute of repose.

Counsel asserts that the statutory limitation contained in section 204(a) of the Act as it relates to the petitioners who are no longer married at the time of the filing of the Form I-360 should be tolled due to the equities involved in this case. As counsel notes, the equitable tolling doctrine is presumed to apply to every federal statute of limitation. *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946); *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1188 (9th Cir. 2001). However, not every statutory time limit is a statute of limitations subject to equitable tolling. A crucial distinction exists between statutes of limitation and statutes of repose. *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9th Cir. 2003). A statute of limitations limits the time in which a plaintiff may bring suit after a cause of action accrues. A statute of repose, in contrast, "cuts off a cause of action at a certain time irrespective of the time of accrual of the cause of action." *Weddel v. Sec'y of H.H.S.*, 100 F.3d 929, 931 (Fed. Cir. 1996). Statues of repose are not subject to equitable tolling. *Lampf Pleva, Lipkin, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991) (superseded on other grounds); *Weddel v. Sec'y of H.H.S.*, 100 F.3d at 930-32.

For example, several federal circuits have held that the 90 and 180 day filing deadlines for motions to reopen removal (or deportation) proceedings are statutes of limitation subject to equitable tolling. *See Socop-Gonzalez*, 272 F.3d at 1187-90; *Iavorski v. I.N.S.*, 232 F.3d 124, 134 (2nd Cir. 2000); *Riley v. I.N.S.*, 310 F.3d 1253, 1257 (10th Cir. 2002); *Borges v. Gonzalez*, 402 F.3d 398, 406 (3d Cir. 2005); *Pervais v. Gonzalez*, 405 F.3d 488, 490 (7th Cir. 2005). Yet, the Eleventh Circuit Court of Appeals has held that the filing deadlines for motions to reopen deportation and removal proceedings are mandatory and jurisdictional and consequently not subject to equitable tolling. *Abdi v. U.S. Atty Gen.*, 430 F.3d 1148, 1150 (11th Cir. 2005); *Anin v. Reno*, 188 F.3d 1273, 1278 (11th Cir. 1999). In addition, the Ninth Circuit Court of Appeals has held that the filing deadline for

special rule cancellation under the Nicaraguan Adjustment and Central American Relief Act (NACARA)[3] is a statute of repose not subject to equitable tolling, *Munoz v. Ashcroft*, 339 F.3d at 957, but has held that the time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling, *Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005).

On appeal, counsel contends that the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitations subject to equitable tolling rather than a statute of repose not subject to equitable tolling. Counsel cites *Albillo-DeLeon*, and states that application of the factors outlined in that case make clear that the two-year, post-legal termination filing period at issue here is a statute of limitations rather than a statute of repose.

As was noted previously, the court in *Munoz* held that the filing deadline for special rule cancellation under NACARA is a statute of repose not subject to equitable tolling. *See Munoz v. Ashcroft*, 339 F.3d at 957. On the other hand, the court in *Albillo-DeLeon* held that the time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling. *See Albillo-DeLeon v. Gonzalez*, 410 F.3d at 1098. In distinguishing between NACARA's filing deadline for special rule cancellation and the time limit for filing motions to reopen, the court in *Albillo-DeLeon* stated the following:

> [I]n *Munoz*, we were asked to determine whether section 203(a) of NACARA was subject to equitable tolling . . . Section 203(a) identifies the threshold requirements for NACARA eligibility. To qualify for relief under NACARA, section 203(a) required that an alien file an asylum application by April 1, 1990, and apply for certain benefits by December 31, 1991. In *Munoz*, the petitioner applied for asylum on August 23, 1997, shortly after he turned eighteen years old . . . The petitioner argued that the eligibility filing dates should be equitably tolled until one year after he reached the age of majority. . . .
>
> We disagreed, concluding that the NACARA eligibility filing deadlines (April 1, 1990, and December 31, 1991) are cut-off dates . . . Noting that section 203(a) is "fixed by statute and unrelated to any variable," as serves to define and close class eligibility, we deemed the provision a jurisdictional statute of repose and therefore not subject to equitable tolling" . . . .
>
> The government contends that this case is analogous to *Munoz*, and that we should conclude that section 203(c), like 203(a), is jurisdictional and not subject to equitable tolling. For the reasons set forth below, we find that section 203(c) is readily distinguishable from section 203(a).

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[3] Nicaraguan Adjustment and Central American Relief Act, Pub.L. No. 105-100, 111 Stat. 2160 (1997), *amended by* Pub.L. No. 105-139, 111 Stat. 2644 (1997).

> First, section 203(a) involved a threshold condition for eligibility under NACARA. Section 203(c), on the other hand, serves a more limited purpose and applied to a smaller group—namely, to only those aliens who have *already complied* with section 203(a)'s filing deadlines [emphasis in original]. Albillo-DeLeon has already met section 203(a)'s threshold requirements. . . .
>
> In addition, section 203(c), unlike section 203(a), does not identify a specific cutoff date by which a petitioner must file his or her motion . . . Rather, section 203(c) states that the filing deadline "shall begin not later than 60 days after the date of enactment of the [NACARA] and shall extend for a period not to exceed 240 days" but allows the Attorney General discretion in fixing the date. . . .
>
> Finally, as discussed above, the legislative history suggests that Congress intended that motions to reopen be subject to equitable tolling . . . The government is correct in noting that where the plain meaning of a statute is clear, the sole function of the courts is to enforce the statute. . . .

Id. at 1097-98.

On appeal, counsel contends that the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitations subject to equitable tolling, and that that the *Albillo-DeLeon* court's reasoning supports her contention. Counsel looks to three factors analyzed by the court in *Albillo*-DeLeon, and states that those factors support her claim that section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitations rather than a statute of repose. Counsel argues that: (1) the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act serves a limited purpose, and applies to a specific, small group of people; (2) that section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act does not identify a specific cut-off date by which a petitioner must file his or her petition, but that it sets a "soft deadline" like the statute at issue in *Albillo-DeLeon*; and (3) that the legislative history indicates "a strong general intent to allow battered immigrant women to escape from their abusers to gain or maintain U.S. immigration status."

The AAO disagrees with counsel's first assertion: that the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act serves a limited purpose, and applies to a specific, small group of people. As was noted previously, in distinguishing section 203(c), which it had previously determined to be a statute of repose not subject to equitable tolling, of NACARA from section 203(a), the court in *Albillo-DeLeon* noted that section 203(a) had involved a threshold condition for eligibility under NACARA, but that section 203(c) served a smaller group: only those who had already complied with section 203(a). The AAO disagrees that such is the case with section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. Rather, the AAO finds that section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act involves a threshold condition for eligibility for the

filing of a self-petition under section 204(a)(1)(B)(ii) of the Act. Every individual filing a self-petition under section 204(a)(1)(B)(ii) of the Act as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States must establish that he or she has a qualifying relationship with a lawful permanent resident of the United States. In cases where the allegedly abusive spouse has lost his or her status as a lawful permanent resident of the United States, the petition must be filed within two years of the date such permanent residence was lost. Otherwise, there is no qualifying relationship. If there is no qualifying relationship, then the alien is not, pursuant to section 204(a)(1)(B)(ii)(I) of the Act, "an alien who is described in subclause (II) [who] may file a petition."

As such, the language of the statute states that, if the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is not met, then, pursuant to section 204(a)(1)(B)(ii)(I) of the Act, the alien may not file an application. The AAO, therefore, finds the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act to be a threshold requirement for eligibility. It does not find the reasoning of the court in *Albillo-DeLeon* controlling on this point. Rather, it finds the statute at issue here more akin to the statute analyzed by the court in *Munoz*, which found that statute to be a statute of repose not subject to equitable tolling.

Nor does the AAO agree with counsel's second assertion: that section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act does not identify a specific cut-off date by which a petitioner must file his or her petition, but that it sets a "soft deadline" like the statute at issue in *Albillo-DeLeon*. Rather, the AAO finds that section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act does in fact specify a specific cut-off date. As was noted previously, the statute at issue in *Albillo-*DeLeon, section 203(c) of NACARA, stated that the filing deadline "shall begin not later than 60 days after the date of enactment of the [NACARA] and shall extend for a period not to exceed 240 days," but allowed the Attorney General (now the Secretary of Homeland Secretary) discretion in fixing the date. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) sets a firm, two-year deadline for filing. In contrast, section 203(c) of NACARA allowed the Secretary of Homeland Security the discretion to establish her own date for the filing deadline, so long as it was no less than 60 days, and no more than 240 days. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act afforded the Secretary of Homeland Security no such discretion. Again, the AAO does not find the reasoning of the court in *Albillo-DeLeon* controlling on this point, and finds the statute at issue here more akin to the statute analyzed by the court in *Munoz*. It finds that the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act does in fact identify a specific cut-off date: within two years from the date the lawful permanent resident spouse loses his or her status.

In her third contention that the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statue of limitations subject to equitable tolling rather than a statute of repose, counsel looks to the legislative history behind the Violence Against Women Act. However, the AAO finds such an inquiry unnecessary as, pursuant to the previous discussion, the AAO finds that the plain language of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa)

suggests that the statute is jurisdictional, and therefore a statute of repose. In the present matter, the AAO will not consider the legislative history of the applicable law or the related floor statements. Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984).

For all of these reasons, the AAO finds that counsel has failed to establish that section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitations subject to equitable tolling.

III. Due Diligence

Even if section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitations subject to equitable tolling, the record does not demonstrate that the petitioner is entitled to such equitable relief. Ineffective assistance of counsel may be a basis for equitably tolling an immigration statute of limitations. *See e.g. Iavorski v. I.N.S.*, 232 F.3d at 134; *Mahmood v. Gonzales*, 427 F.3d 248, 251 (3rd Cir. 2005); *Pervaiz v. Gonzales*, 405 F.3d at 490-91; *Lopez v. I.N.S.*, 184 F.3d 1097, 1098 (9th Cir. 1999). However, to warrant equitable tolling, an alien must demonstrate that he or she exercised due diligence in pursuing the case during the period sought to be tolled. *Iavorski v. I.N.S.*, 232 F.3d at 135; *Albillo-De Leon v. Gonzalez*, 410 F.3d at 1099-100. The record contains no evidence that the petitioner exercised due diligence.

Although the record documents former counsel's ineffective assistance, the record contains no evidence of the petitioner's own actions regarding her case. For example, the petitioner submits no evidence or explanation of her agreement with former counsel and does not indicate whether she knew of the two-year filing deadline of section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act. The record indicates that the petitioner signed the Form I-360 on March 17, 2006, and the two-year filing deadline ended on July 9, 2006. There is no indication as to whether the petitioner inquired with previous counsel as to whether her petition had been filed and, if not, why she did not do so. Without evidence of when and how the petitioner became aware of prior counsel's mistakes and the petitioner's own subsequent actions, the AAO cannot conclude that she exercised due diligence that would merit equitable tolling of the two-year deadline. *Cf. Mahmood v. Gonzales*, 427 F.3d at 252 (alien did not demonstrate due diligence where the record contained no evidence of his actions during two significant periods, each exceeding one year, in the procedural history of the case).

The AAO, therefore, finds that the petitioner has failed to establish that she was the victim of ineffective assistance of her previous counsel. Moreover, even if she had failed to make such a demonstration, the AAO finds that the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of repose not subject to equitable tolling. Finally, even if the petitioner had established that she was the victim of ineffective assistance of her previous counsel, and that the two-year, post-legal termination filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitations subject to equitable tolling, the petitioner has still failed to establish that she exercised due diligence that would merit equitable tolling of the two-year deadline.

Accordingly, the AAO concurs with the director's determination that, because her husband lost his status as a lawful permanent resident of the United States more than two years before she filed her petition, the petitioner failed to establish that she has a qualifying relationship with a lawful permanent resident of the United States, or that she is eligible for preference immigrant status under section 203(a)(2)(A) of the Act on the basis of such a relationship. Accordingly, the AAO will not disturb the director's decision.

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.