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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

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B9.

FILE: [REDACTED]
EAC 08 118 50046

Office: VERMONT SERVICE CENTER

Date: **APR 30 2010**

IN RE: Petitioner: [REDACTED]

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

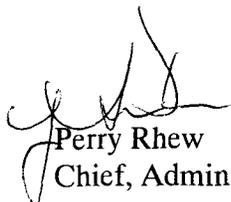
ON BEHALF OF PETITIONER:

[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, as required by 8 C.F.R. 103.5(a)(1)(i).


Perry Rhew
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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as an immigrant 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 her United States lawful permanent resident spouse.

The director denied the petition because the petitioner did not establish that she had a qualifying relationship as the spouse of a U.S. citizen or lawful permanent resident. The director also determined that, although the petitioner's evidence pertaining to the requisite joint residency and battery and/or extreme cruelty was deficient, these additional issues would not be addressed due to the petitioner's statutory ineligibility.

On appeal, counsel submits a brief and additional evidence, including correspondence from the U.S. Postal Service indicating that the petition was received by the Vermont Service on March 14, 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 he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence 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).

An alien who has divorced a lawful permanent resident 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 lawful permanent resident spouse." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

Section 204(a)(1)(J) of the Act further 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 petitioner in this case is a native and citizen of Colombia who was admitted to the United States on July 20, 1999, as a B-2 nonimmigrant visitor for pleasure. On April 28, 2001, the

petitioner married C-T¹, then a U.S. lawful permanent resident, in North Bergen, New Jersey. On September 25, 2003, C-T- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on August 9, 2005.

According to the service center's date stamp, the petitioner filed the instant Form I-360 on March 17, 2008. The director denied the petition on March 30, 2009, finding that the petitioner did not establish that she had a qualifying relationship with her former husband because they were divorced on March 14, 2006, which was over two years before the March 17, 2008 filing date.

On appeal, counsel submits evidence from the U.S. Postal Service that this Form I-360 was received by the Vermont Service Center on March 14, 2008.

The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a lawful permanent resident, an alien must have been the bona fide spouse of a lawful permanent resident "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb). On appeal, counsel submits evidence that this petition was received by the Vermont Service Center on March 14, 2008, which is within two years of the petitioner's March 14, 2006 divorce from her lawful permanent resident spouse. The present record, however, still fails to demonstrate the petitioner's eligibility for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, as the director did not address the issue of abuse, and thus a connection between the abuse and the legal termination of the marriage has not been established, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb). The director also did not address the issue of joint residency. Accordingly, the case will be remanded for the director to determine whether the petitioner qualifies for benefits under Section 204(a)(1)(B)(ii) of the Act. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the petitioner qualifies for benefits under Section 204(a)(1)(B)(ii) of the Act, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's March 30, 2009 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.

¹ Name withheld to protect individual's identity.