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



U.S. Citizenship
and Immigration
Services

[REDACTED]

B9.

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 06 2010**

IN RE: Petitioner: [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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]

Chief, Administrative Appeals Office

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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 dismissed. The petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("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.

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).

On February 9, 2010, the director denied the petition, determining that the petitioner had not established that he had a qualifying relationship with a U.S. citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion. Counsel indicates on the Form I-290B that his brief and/or additional evidence is attached. Counsel attaches an acknowledgement from United States Citizenship and Immigration Services (USCIS) that the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on March 24, 2008.¹ Counsel asserts that USCIS failed to consider the previously filed Form I-360 that had been filed prior to the two-year anniversary of the petitioner's divorce which preserved the petitioner's right to seek benefits under the VAWA statute and regulations. Counsel also notes that the director referenced the petitioner's failure to establish that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse but had not provided an explanation regarding the deficiencies of the petitioner's documentary evidence on this issue. The record does not include further argument or documents in support of the appeal. The record is considered complete.

Section 204(a)(1)(J) of the Act 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].

¹ The March 24, 2008 Form I-360 was denied by the Vermont Center Director on October 5, 2009 for the petitioner's failure to establish a qualifying relationship with a United States citizen spouse and his eligibility for immigrant classification, as well as failure to establish that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse.



The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native of the Dominican Republic. He entered the United States on June 1, 2001 as a B-2 visitor with authorization to remain until December 1, 2001. On February 22, 2003, the petitioner married M-A-², the claimed abusive United States citizen spouse in the State of New York. On August 1, 2007, the New York County Supreme Court issued a Judgment of Divorce dissolving the marriage. On November 6, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Qualifying Relationship

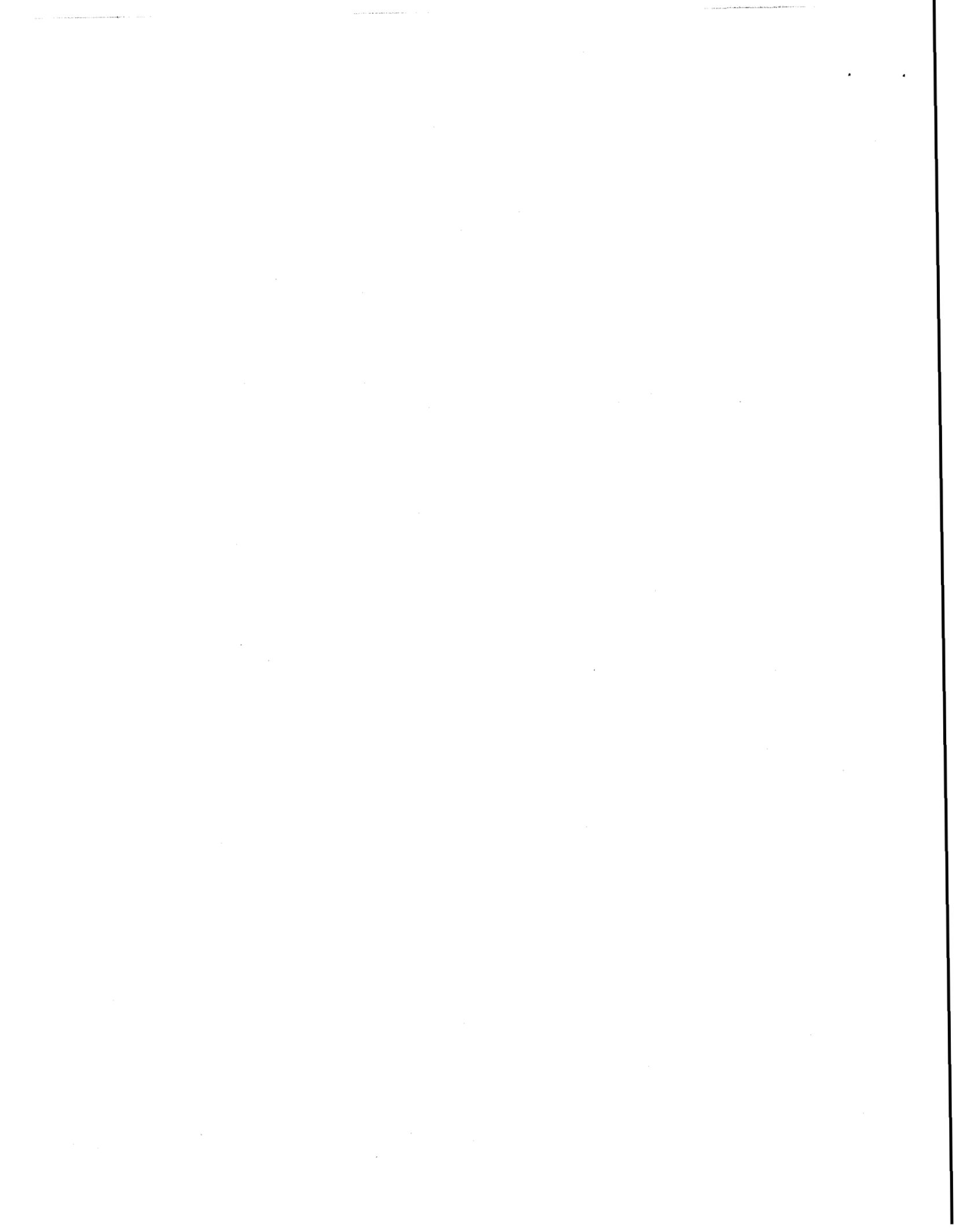
The director determined that the petitioner had not established a qualifying relationship with M-A- as the marriage had terminated more than two years prior to the petitioner's filing of the Form I-360.

As noted above, counsel for the petitioner asserts that the petitioner's previously filed Form I-360, filed on March 24, 2008, preserved the petitioner's eligibility to seek benefits under the VAWA statute and regulations. The AAO disagrees. The previously filed Form I-360 was denied on October 5, 2009. The issues of the matter were fully adjudicated and the petitioner did not file an appeal. The previously filed Form I-360 is not considered a placeholder for future filings of Forms I-360. The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a United States citizen, an alien must have been the bona fide spouse of a United States citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 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). As previously observed, the petitioner in this matter was divorced from his spouse for more than two years at the time of filing the instant petition. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with his former spouse.

Abuse

The AAO also finds that the petitioner failed to establish that he had been subjected to battery or extreme cruelty by his former spouse. Although the director did not discuss the deficiencies in the record regarding this issue, the AAO has reviewed the petitioner's personal statement and the assessments of the petitioner's mental health prepared by [REDACTED] psychotherapist. Neither the petitioner nor [REDACTED] provides examples of M-A-'s claimed threatening or abusive behavior and neither provides substantive, probative information indicating that M-A-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty.

² Name withheld to protect the individual's identity.



Good Moral Character

The AAO also observes that the director referenced the petitioner's failure to establish that he is a person of good moral character but did not further expand upon the deficiencies in the record regarding this issue. The AAO finds that the record includes a good conduct certificate issued by the New York City Police Department on February 25, 2008. The record does not include a good conduct certificate from February 25, 2008 to November 6, 2009, the date the Form I-360 petition was filed. Thus, the petitioner has failed to provide an updated local police clearance or his personal statement attesting to his good moral character. Accordingly, the AAO finds that the petitioner has not established that he is a person of good moral character.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with his former spouse, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(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 relationship to the abusive spouse. Because the petitioner did not establish that he had a qualifying relationship as the spouse of a U.S. citizen at the time of filing his petition, he is also ineligible for immediate relative classification based on their former marriage.

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. As always, the burden of proof in visa petition proceedings 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.

