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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**

[Redacted]

B9.

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 13 2010**

IN RE: Petitioner: [Redacted]

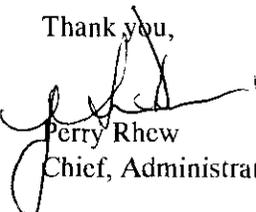
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

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,

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 appeal will be dismissed.

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, as of the November 23, 2009 filing date, she had a qualifying relationship as the spouse of a U.S. lawful permanent resident and that she was eligible for immigrant classification based upon that relationship, as she and her spouse were divorced on September 26, 2007.

On appeal, counsel asserts, in part, that the director's decision is contrary to the congressional intent of the *Battered Immigrant Women Protection Act of 2000*. Counsel submits a brief and the following additional evidence: a personal affidavit from the petitioner, dated February 26, 2010; copies of the petitioner's medical records, dated March 5, 2004; and a Family Offense Petition, Summons, and Temporary Order of Protection, all filed by the petitioner on October 29, 2004, in the Family Court of the State of New York.

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).

The petitioner in this case is a native and citizen of the Dominican Republic. On September 22, 1999, the petitioner married [REDACTED]¹, a former U.S. lawful permanent resident, in the Dominican Republic.² It is noted that [REDACTED], who immigrated to the United States on July 3, 1991, was ordered removed and deported from the United States on August 25, 1999, by an Immigration Judge.

¹ Name withheld to protect individual's identity.

² On the petition and in her personal affidavit submitted on appeal, dated February 26, 2010, the petitioner claims that she and [REDACTED] were married on December 13, 1997, which conflicts with the September 22, 1999 date reflected on the *Certificado de Matrimonio* and related translation. The record contains no explanation for this inconsistency.

Therefore, at the time of the petitioner and [REDACTED]-'s September 22, 1999 marriage, [REDACTED] was no longer a U.S. lawful permanent resident. On September 26, 2007, the petitioner and [REDACTED] were divorced in the Dominican Republic.

The petitioner filed the instant Form I-360 on November 23, 2009. The director denied the petition on February 26, 2010, finding that the petitioner did not establish that she had a qualifying relationship with her former husband because they were divorced on September 26, 2007, which was over two years before the November 23, 2009 filing date.

On appeal, counsel asserts, in part, that the director's decision is contrary to congressional intent of the *Battered Immigrant Women Protection Act of 2000*.

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). Moreover, the petitioner in this case has not demonstrated that she was ever married to a U.S. lawful permanent resident, as [REDACTED] was ordered removed on August 25, 1999, and subsequently deported prior to the petitioner's marriage to [REDACTED] in the Dominican Republic on September 22, 1999. Although the petitioner claims that she and N-N- were married on December 13, 1997, the record contains no evidence in support of her claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Even if the AAO were to accept the petitioner's claimed December 13, 1997 marriage date, indicating that she was once married to a U.S. lawful permanent resident, the record would still be deficient, as she was divorced from her spouse for more than two years at the time of filing the petition. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with her former husband. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.