

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**
PUBLIC COPY

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**

B9



FILE: [REDACTED]
EAC 10 046 50031

Office: VERMONT SERVICE CENTER

Date: AUG 13 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:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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.

On March 4, 2010, the director denied the petition, determining that the petitioner had not established: that she had a qualifying relationship with a U.S. citizen.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a supplemental brief.

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 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 further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or

sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

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 filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala. She initially entered the United States on or about January 1, 2001

without inspection. On September 12, 2003, the petitioner married G-A-¹, the claimed abusive United States citizen spouse. On November 19, 2007, a divorce action brought by G-A- was submitted to the Supreme Court, State of New York, County of Orange and on November 20, 2007 the Honorable Joseph G. Owen entered the Judgment of Divorce. The Judgment of Divorce was signed by the clerk and recorded on December 4, 2009. On December 4, 2009, the petitioner filed the 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 G-A- because her marriage to G-A- was terminated on November 19, 2009 and the Form I-360 was not filed until December 4, 2009, more than two years later. The director determined that section 204(a)(1) of the Act allowed a former spouse to file a self-petition for up to two years following the termination of a qualifying marriage and that there was no exception to the two-year limitation.

On appeal, counsel for the petitioner observes that under New York law a judgment is not perfected until it is entered by the clerk. Counsel cites N.Y. C.P.L.R. section 5011 which states: “a judgment is a determination of the rights of the parties in an action or special proceeding [. . .]” and N.Y. C.P.L.R. section 5016(a) which states: “a judgment is entered when, after it has been signed by the clerk, it is filed by him.” Counsel asserts that it is the entry of the judgment which grants the divorce, citing *Obadiah v. Shaw*, 266 A.D.2d 521 (1999). Upon review of the case cited, the AAO observes that the Court in *Obadiah* found that the entry of the divorce judgment five months after the divorce had been granted was a mere ministerial act. Nevertheless, the act of entering the divorce judgment, although a mere ministerial act, is the final act in dissolving the petitioner’s marriage. Moreover, we find that section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act prescribes that a divorced alien’s self-petition must be filed no longer than two years after the legal termination of the marriage, a period of time which includes the second anniversary of the marriage’s termination. Accordingly, the petitioner filed within the two years following the termination of her marriage. The director’s decision to the contrary is withdrawn.

Although the petitioner has established that she filed the Form I-360 petition within two years of the termination of her marriage, the petitioner has not demonstrated “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). Upon review of the record, the AAO finds a police report dated March 21, 2007 regarding a confrontation between the petitioner and G-A- regarding the petitioner’s refusal to sign the divorce papers. The police report narrative is not completely legible and does not appear to include sufficient information regarding the confrontation to determine whether the petitioner was subjected to battery or extreme cruelty perpetrated by her former spouse. As the director’s request for further evidence (RFE) did not request further evidence on the issue of abuse, the petitioner has not had opportunity to provide further information for review on this issue. Thus, the matter must be

¹ Name withheld to protect the individual’s identity.

remanded to provide the petitioner the opportunity to demonstrate a connection between the termination of her marriage to G-A- and the battery or extreme cruelty by the United States citizen spouse.

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 director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.