

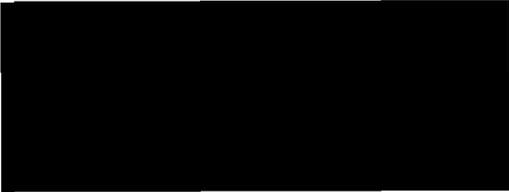
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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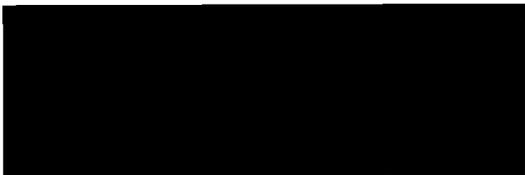
Office: VERMONT SERVICE CENTER

Date: AUG 18 2010

IN RE: [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 service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

The director denied the petition on the basis of his determination that the petitioner had not established her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States because she and her former husband divorced more than two years before the petition was filed. On appeal, counsel submits a letter and additional evidence.

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).

Section 204(a)(1)(A)(iii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen 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 United States citizen within the past 2 years and –
 - (aaa) whose spouse died within the past 2 years;
 - (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
 - (ccc) who 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)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) 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. She married D-W-¹, a citizen of the United States, on June 4, 2004, and they divorced on October 25, 2006. The petitioner filed the instant Form I-360 on October 23, 2008. The director issued a subsequent request for additional evidence, to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including the petitioner's response to the request for additional evidence, the director denied the petition on December 22, 2009. Counsel filed a timely appeal on January 19, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has overcome the ground for denial of the petition.

¹ Name withheld to protect individual's identity.

Qualifying Relationship and Eligibility for Immigrant Classification

In his December 22, 2009 decision, the director looked to the petitioner's divorce judgment, which was dated September 15, 2006, and concluded that because the petitioner did not file the Form I-360 until October 23, 2008, she had failed to file it within two years of her divorce and, as such, had failed to establish a qualifying relationship pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

On appeal, counsel contends that although the divorce judgment was dated September 15, 2006, it was neither "rendered" nor "entered" under the laws of Wisconsin until October 25, 2006. As the petitioner's divorce judgment was rendered and ordered on October 25, 2006, and the instant petition was filed on October 23, 2008, counsel argues that the petition was in fact filed within the two-year filing window.

The AAO agrees with counsel. Although the divorce judgment was dated September 15, 2006, it was not signed by the judge or filed with the clerk of court until October 25, 2006. As noted by counsel, Wisconsin Statutes § 807.11 states the following:

Orders: rendition and entry.

- (1) An order is rendered when it is signed by the judge.
- (2) An order is entered when it is filed in the office of the clerk of court.

Again, the petitioner's divorce judgment was signed by the judge and filed with the clerk of court, on October 25, 2006, and the language of the pertinent state law regarding the effective date of court orders is clear. The divorce judgment was rendered and ordered on October 25, 2006, and this petition was filed within the two-year filing window. The AAO, therefore, withdraws the director's finding that the petition was not filed within two years of the petitioner's divorce.

The language of the statute indicates clearly that in order to remain eligible for classification despite no longer being married to a United States citizen, an alien must make two demonstrations: (1) that he or she was the bona fide spouse of a United States citizen "within the past two years"; and (2) that there was 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 set forth above, the petitioner has met the first requirement. Moreover, the AAO agrees with the director's apparent determination that the petitioner was subjected to battery and/or extreme cruelty by her ex-husband and that there was a connection between that abuse and the termination of the marriage. The petitioner, therefore, has satisfied the second requirement.

Accordingly, the AAO withdraws the director's determination that the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because her petition was filed more than two years after her divorce from her U.S. citizen spouse.

Conclusion

As set forth above, the petitioner has established the existence of a qualifying relationship with her ex-husband, and the AAO concurs with the director's apparent determination that the petitioner meets all other statutory requirements. The petitioner has established that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden and the appeal will be sustained.

ORDER: The director's December 22, 2009 decision is withdrawn. The appeal is sustained, and the petition is approved.