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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

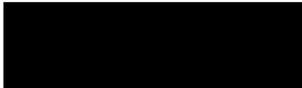


U.S. Citizenship  
and Immigration  
Services



B9

FILE:



Office: VERMONT SERVICE CENTER Date:

DEC 07 2010

IN RE:

Petitioner:



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.

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 the \$630 fee. 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,

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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 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).

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].

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, an alien who has divorced an abusive United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person who was a bona fide spouse of a United States citizen within the past 2 years and 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. *See* section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

On February 26, 2010, the director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. citizen spouse and correspondingly, that she had eligibility for immigrant classification based on a qualifying relationship. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a statement on the Form I-290B, the petitioner's statement, and documentation that had previously been provided for the record.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China. She entered the United States on or about May 24, 2004 on a K-1 visa. On June 8, 2004, the petitioner married N-P-<sup>1</sup>, the claimed abusive United States citizen spouse in the State of Indiana. On July 1, 2005, a judgment of divorce was issued terminating

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<sup>1</sup> Name withheld to protect the individual's identity.

the marriage. The instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, was filed on March 6, 2008.

*Qualifying Relationship and Eligibility for Immigrant Classification Based on the Qualifying Relationship*

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

Counsel asserts that the petitioner was suffering from major depressive disorder and post traumatic stress disorder as a result of severe abuse by her former husband and that her mental health condition did not improve until the spring of 2008; thus the statutory deadline for filing the Form I-360 should be tolled. Counsel asserts, in the alternative, that the statutory requirement for filing the petitioner's Form I-360 should be excused or waived because the qualifying relationship was satisfied when United States Citizenship and Immigration Services (USCIS) approved the petitioner's previously filed Form I-360. The record includes evidence that the petitioner first filed a Form I-360 on May 21, 2005 which was approved on August 22, 2005. On December 15, 2005, the petitioner was informed that it was the intent of USCIS to revoke approval of the Form I-360. On August 15, 2007, the director revoked approval of the Form I-360 as the petitioner failed to establish that she was a person of good moral character.<sup>2</sup> The petitioner did not timely file an appeal.

The petitioner, in her personal statement submitted on appeal, references previously submitted psychiatric evaluations that reflected that she had impaired judgment due to clinical depression and contends that the statutory requirement for filing a Form I-360 should be tolled due to her psychiatric condition, or in the alternative, that the filing date of the instant Form I-360 should be considered the date of her first filed Form I-360, filed on May 21, 2005 prior to the termination of her marriage on July 1, 2005.

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 her 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 her former spouse.

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<sup>2</sup> The director observed that the petitioner had been arrested twice for prostitution and that the petitioner used a false name and date of birth upon her arrests and that the petitioner pled guilty to disorderly conduct on each arrest. The director determined that the petitioner provided false information to police officers and appeared to be earning her living as a prostitute and thus could not be found to be a person of good moral character.

Upon review of the record, the petitioner's "impaired mental condition" did not prevent her from timely filing her first filed Form I-360 and thus, the assertion that her mental condition prevented her from timely filing the second Form I-360 is not meritorious. The first filed Form I-360 is not a place holder for subsequently filed Forms I-360.

The present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her 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 she had a qualifying relationship as the spouse of a U.S. citizen at the time of filing the instant petition, she is also ineligible for immediate relative classification based on the 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. The petition is denied.