

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
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B9

FILE:  Office: VERMONT SERVICE CENTER

Date:
DEC 15 2010

IN RE: 

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:

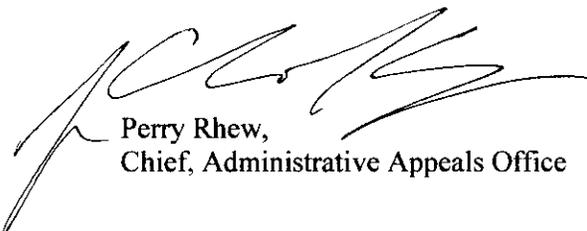


INSTRUCTIONS:

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 a fee of \$630. 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 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 dismissed.

The petitioner seeks immigrant classification under 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.

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 the record indicated that her marriage to her former husband was annulled more than two years before the petition was filed. The petitioner, through counsel, filed a timely appeal. On appeal, the petitioner submits a brief argument made on the Form I-290B, Notice of Appeal or Motion.

Counsel marked the box at section two of the Form I-290B, Notice of Appeal, to indicate that a brief and/or additional evidence would be sent within 30 days. However, to date, over five months later, we have not received an additional brief or evidence. Accordingly, the record is deemed complete and ready for adjudication.

Applicable Law

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 evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the United Kingdom. She married H-T-¹ a citizen of the United States, on July 25, 1991. The petitioner states that H-T- annulled the marriage, without her knowledge, in 1994. The petitioner filed the instant Form I-360 on July 17, 2008. The director issued two subsequent requests for additional evidence, as well as a notice of intent to deny (NOID) the petition, to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence and NOID, the director denied the petition on June 17, 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 failed to overcome the director's ground for denying this petition.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On appeal, counsel does not dispute the director's finding that the filing of a Form I-360 more than two years after the legal termination of an alien's marriage to his or her U.S. citizen spouse precludes

¹ Name withheld to protect individual's identity.

approval of the petition. Instead, he stated on the Form I-290B that the legal validity of the marriage between the petitioner and H-T- was pending before the Supreme Court of New York, Nassau County. According to counsel, the petitioner was seeking to have that court legally recognize the marriage and then issue a divorce judgment, and that a decision would be issued in August 2010. However, counsel has submitted no evidence since his submission of the Form I-290B on July 8, 2010. As such, the record still indicates that the marriage between the petitioner and H-T- was lawfully terminated upon its annulment in 1994, fourteen years before this petition was filed.

The language of the statute states 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. 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). The petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because the record does not establish that she was the bona fide spouse of a United States citizen within two years of the date she filed the petition.

Conclusion

The petitioner has failed to establish her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States because the record indicates that her marriage to H-T- was annulled more than two years before the petition was filed. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and her petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.