

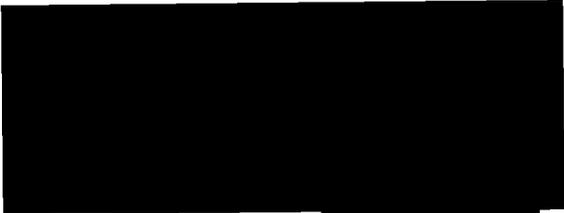
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 19 2010**

EAC 08 024 50450

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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 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).

The director denied the petition on April 22, 2009 determining that the petitioner had not established that she had a qualifying relationship with her former husband due to the dissolution of their marriage over two years before the petition was filed. The director also noted that the record was deficient in regards to the issue of the petitioner’s good moral character but did not directly address this issue.

Counsel timely submits a Form I-290B, Notice of Appeal or Motion. Counsel notes that the petitioner had previously applied for Form I-360 benefits within two years of the termination of her marriage and asserts that the prior Form I-360 would have been approved but for the petitioner’s criminal conviction for theft. Counsel asserts that the petitioner’s criminal conviction for theft has now been vacated for constitutional reasons. Counsel also observes that United States Citizenship and Immigration Services (USCIS) had indicated that the petitioner had established a *prima facie* case with the filing of the prior Form I-360. Counsel further notes that USCIS had concluded that the petitioner’s prior marriage was *bona fide* because it had approved the Form I-130, Petition for Alien Relative, filed by her former spouse. Counsel asserts that the Form I-360 at issue on appeal is an amendment of the prior Form I-360 and should be approved.

The record includes the following pertinent facts: The petitioner is a citizen of Ecuador. She married T-H¹ on January 12, 1998. A Form I-130 was filed on her behalf on January 14, 1998. The record shows that the Form I-130 was initially approved but then was revoked on June 13, 2001 and a subsequently filed motion to reopen and reconsider was dismissed. The record includes a Judgment of Absolute Divorce dissolving the marriage on June 27, 2005. The petitioner filed the instant Form I-360 on October 26, 2007.

The language of the statute clearly indicates that to remain eligible for classification despite no

¹ Name withheld to protect the individual and his family’s identity.

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 noted, the petitioner in this matter was divorced from her spouse for more than two years at the time of filing the petition. There is no exception to this requirement. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with her former husband. Counsel's assertion that the instant Form I-360 is an amendment of the previously filed and denied Form I-360 is without merit. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). Moreover, counsel's assertion that the previously filed and denied Form I-360 would have been approved but for the petitioner's criminal conviction is unsupported in the record. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.