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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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Bg.

FILE: [REDACTED]
EAC 07 264 50946

Office: VERMONT SERVICE CENTER

Date: MAR 29 2010

IN RE: Petitioner: [REDACTED]

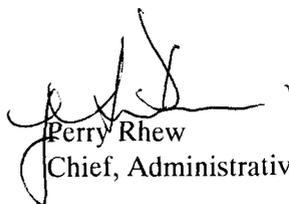
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[REDACTED]

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 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 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 because the record failed to establish that the petitioner had a qualifying relationship with her former husband within two years of filing this petition, as required by statute.

On appeal, counsel states, in part: “Although the USCIS claims that there is no provision of law whereby an alien may file such a petition beyond this two-year period, federal law has ample examples of tolling time periods for many statutes.”

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 further 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 petitioner in this case is a native and citizen of Colombia who entered the United States without inspection reportedly on December 1, 1992. The petitioner subsequently married a U.S. citizen and was divorced on February 3, 2000, and thus on February 19, 2000, her I-485, Application to Register Permanent Residence or Adjust Status, was denied. Then on April 20, 2001, the petitioner married G-S¹, a U.S. citizen, in Miami, Florida. On January 22, 2004, their marriage was dissolved by order of the Circuit Judge of the Circuit Court of the Eleventh Judicial Circuit, In and For Miami-Dade County,

¹ Name withheld to protect individual’s identity.

Florida.² The petitioner filed this Form I-360 on September 17, 2007. The director denied the petition on September 26, 2008, finding that the petitioner did not establish 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.

On appeal, counsel cites to court decisions, stating that the director has the authority to determine the merits of a claim made under the principle of the federal equitable tolling doctrine.

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 noted, the petitioner in this case was divorced from her spouse for more than two years at the time of filing the petition. Accordingly, we concur with the director’s determination that the petitioner did not establish a qualifying relationship with her former husband.

Counsel asserts that: “federal law has ample examples of tolling time periods for many statutes.” The equitable tolling doctrine is presumed to apply to every federal statute of limitation. *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946); *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1188 (9th Cir. 2001). However, not every statutory time limit is a statute of limitations subject to equitable tolling. A crucial distinction exists between statutes of limitation and statutes of repose. *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9th Cir. 2003). A statute of limitations limits the time in which a plaintiff may bring suit after a cause of action accrues. A statute of repose, in contrast, “cuts off a cause of action at a certain time irrespective of the time of accrual of the cause of action.” *Weddel v. Sec’y of H.H.S.*, 100 F.3d 929, 931 (Fed. Cir. 1996). Statutes of repose are not subject to equitable tolling. *Lampf Pleva, Lipkin, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991) (superseded on other grounds); *Weddel v. Sec’y of H.H.S.*, 100 F.3d at 930-32. Counsel’s citation to several court decisions fails to demonstrate that the statute in the instant matter is a statute of limitations. Accordingly, the petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

Beyond the director’s decision, as the petitioner did not have a qualifying relationship as the spouse of a U.S. citizen pursuant to section 204(a)(1)(A)(iii) of the Act, she also is not eligible for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.³

² Case No. 03-10740 FC 29.

³ 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

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.