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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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FILE:

[REDACTED]
EAC 08 023 50104

Office: VERMONT SERVICE CENTER

Date: **MAY 06 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:

SELF-REPRESENTED

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 service center director denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. The previous decision of the AAO, dated September 10, 2009, will be affirmed and the petition will be denied.

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 because the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen and that he is eligible for immigrant classification based upon that relationship. On September 10, 2009, the AAO dismissed the appeal, concurring with the director that, as the petitioner has been divorced for more than two years before he filed the petition, he could not establish that he had a qualifying relationship as the spouse of a United States citizen or that he was eligible for immigrant classification based upon that relationship.

On motion, the petitioner submits a letter and an affidavit from his mother.

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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated September 10, 2009, only certain facts will be repeated as necessary here. The petitioner in this case is a native and citizen of Yugoslavia who was admitted to the United States on March 19, 2002, as a nonimmigrant visitor for pleasure. On July 5, 2002, the petitioner married

█, a U.S. citizen, in Chicago, Illinois. On July 30, 2002, █ filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Adjust Status. On August 9, 2004, the district director for U.S. Citizenship and Immigration Services (USCIS) in Chicago issued a Notice of Intent to Deny (NOID) the I-130 petition, and requested additional evidence to demonstrate that the marriage between the petitioner, in this case, █, and the beneficiary was bonafide. On January 6, 2005, the district director denied the I-130 petition, determining that the petitioner, in this case, █, had not established a bonafide marriage, and, based on the denial of the I-130 petition, the district director concurrently denied the I-485 application. On January 21, 2005, the beneficiary of the I-130 petition, through his counsel, filed an appeal of the denial of the I-130 petition to the Board of Immigration Appeals (BIA). On August 12, 2005, the marriage of the petitioner and █-was dissolved by order of the 15th Judicial Circuit Court of Branch County, Michigan.² On March 6, 2007, the associate regional counsel for USCIS in Chicago requested that the BIA dismiss the appeal because it was improperly filed by the beneficiary of the I-130 petition. On April 13, 2007, the BIA returned the record to the district director for further action. On May 22, 2007, the Chicago field office director reopened the I-130 petition and related I-485 application and indicated that the petitioner, in this case, █, and the beneficiary would be scheduled for another interview. On October 2, 2007, the field operations manager issued a Request for Evidence (RFE) for a dated receipt of the petitioner's Form I-360. On August 26, 2009, this office received copies of Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer, signed by the petitioner's representative on July 12, 2009, and related attachments, pertaining to the denial of the petitioner's I-485 application.

The petitioner filed this Form I-360 on October 22, 2007. The director denied the petition on March 9, 2009, finding that the petitioner did not establish that he had a qualifying relationship with his former wife due to the dissolution of their marriage over two years before the petition was filed. The AAO, in its September 10, 2009 dismissal of the appeal, found that the director was correct in his conclusions.

On motion, the petitioner does not contest the fact that he was divorced from his U.S. citizen spouse for more than two years at the time of filing, but states that his wife divorced him without his knowledge and that he has never appeared to defend his case. The petitioner also states that he was not informed that he was divorced until April 2006, when he received the Petition for Registration of Foreign Judgment, filed on March 23, 2006, and thus the petition was filed less than two years after he was informed of his divorce.

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

¹ Name withheld to protect individual's identity.

█

from his 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 his former wife or that he was eligible for immediate relative classification based on a qualifying relationship with his former wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

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 AAO's September 10, 2009 decision is affirmed. The petition is denied.