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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:



Office: VERMONT SERVICE CENTER

Date:

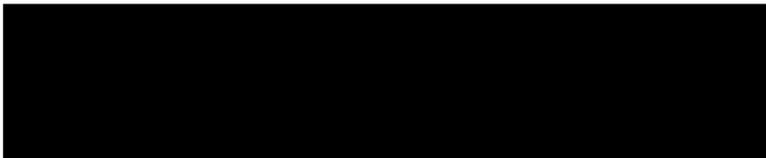
NOV 23 2010

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:

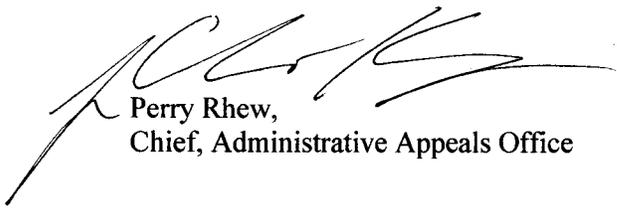


INSTRUCTIONS:

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 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,



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 his eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States because he and his former wife divorced more than two years before the petition was filed. The petitioner, through counsel, filed a timely appeal. On appeal, counsel submits a memorandum reasserting the beneficiary's eligibility, and additional evidence.

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 petitioner is a citizen of the People's Republic of China who entered the United States in B-1 visitor status on July 4, 1998. He married [REDACTED] a citizen of the United States, on December 27, 2001. They divorced on April 23, 2003.² The petitioner filed the instant Form I-360 on September 16, 2009.³ After considering the evidence of record, including the petitioner's responses to his subsequent request for additional evidence, the director denied the petition on February 17, 2010.

The [REDACTED] 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 an alien's divorce from his or her U.S. citizen spouse precludes approval of the petition. Instead, she argues that the petitioner and [REDACTED] are still married because "the marriage was never properly dissolved." Before we consider the merits of counsel's assertion, we will first review the past statements of the petitioner, his affiants, and previous counsel with regard to the current status of his marriage to [REDACTED].

When he filed his first Form I-360 in 2005, the petitioner marked the box at section 3 of the Form I-360 to state that [REDACTED] were divorced. He also stated in his January 3 and October 5, 2005 declarations that he and [REDACTED] were divorced. The first attorney representing the beneficiary in his previous Form I-360 stated in his January 6, 2005 letter that the petitioner and [REDACTED] were no longer married, and the second attorney representing him in that process stated that the couple was no longer married in her October 14, 2005 letter in support of her motion to reopen the director's decision denying that Form I-360.

When he filed the instant Form I-360 in 2009, the petitioner marked the box at section 3 of the Form I-360 to state that he is still married to [REDACTED]. In her March 8, 2009 appellate brief, current counsel states that the name used by [REDACTED] in the divorce documents, "[REDACTED],"⁴ "is a work of fiction," that "no such a person by the name of [REDACTED]-] exists," that the petitioner "never married

¹ Name withheld to protect individual's identity.

² *Consent Decree of Dissolution of Marriage*, (April 23, 2003). We note the petitioner signed this document in two places. *See also Property Settlement Agreement* (April 4, 2003); *Stipulation to File Consent Decree of Divorce of a Non-Covenant Marriage* (April 8, 2003). The petitioner signed the property settlement agreement and initialed it at each page, signed the stipulation twice and initialed it at seventeen places.

³ This is the second Form I-360 filed by the petitioner. The first Form I-360, EAC 05 080 52989, was filed on January 21, 2005 and denied on September 15, 2005.

⁴ Name withheld to protect individual's identity.

anyone by the name,” and that [REDACTED] “does not appear anywhere as a legal name of the USC spouse.” According to counsel, because the April 23, 2003 divorce decree “failed to terminate the marriage” and that the marriage “was never properly dissolved,” the petitioner is still legally married to [REDACTED]

Counsel’s argument is not persuasive. First, we note that previous counsel specifically stated in his memorandum of law in support of his January 24, 2005 motion to reopen the petitioner’s permanent residency petition that [REDACTED] has used the name [REDACTED]. The record also contains a copy of a blank check from the couple’s joint checking account at Bank of America naming both individuals, and [REDACTED]’s name is clearly listed as [REDACTED]. Second, if the petitioner wishes to challenge the validity of the divorce judgment, he must do so in the venue in which the judgment was entered, in this case the Superior Court of Maricopa County, Arizona; the [REDACTED] has no legal authority to review the rulings of that court.

Conclusion

On appeal, the petitioner has failed to establish his eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States because he and [REDACTED] divorced 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).

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.