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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]

Office: VERMONT SERVICE CENTER

Date: OCT 07 2010

IN RE: [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:

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 \$585. 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO affirmed its dismissal of the appeal in response to a subsequent motion to reconsider. The matter is again before the AAO on motion to reopen. The motion will be granted, and the AAO will again affirm its dismissal of the appeal.

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 petitioner filed the instant Form I-360 on October 22, 2007. On March 9, 2009, 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 AAO dismissed the petitioner's timely appeal on September 10, 2009. In its decision, the AAO agreed with the director's 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 AAO affirmed its dismissal of the appeal on May 6, 2010, in response to a subsequent motion to reconsider.

The petitioner submitted the instant motion to reopen on May 28, 2010. On motion, the petitioner submits a letter and a copy of a degree he recently earned. In his letter, the petitioner asserts, again, that he did not learn that his former wife had obtained a default judgment for divorce against him until several months after the judgment had been entered, and that he filed the instant petition less than two years after he learned he was divorced. The motion to reopen is granted.

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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

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

The pertinent facts and procedural history of this case were set forth in the previous decisions of the director and the AAO. As such, the AAO will only repeat such facts as necessary here. The petitioner, a citizen of Yugoslavia, married [REDACTED],¹ a citizen of the United States, on [REDACTED] and they divorced on [REDACTED]. The petitioner filed the instant Form I-360 on October 22, 2007.

The sole issue on motion is whether the petitioner has 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 instant petition was filed. As the AAO fully considered the evidence of record in its previous decision, on motion the AAO will only consider the evidence submitted by the petitioner after issuance of the AAO's most recent decision. The following evidence has been submitted into the record since the AAO's May 6, 2010 decision:

- An updated statement from the petitioner, dated May 26, 2010;
- A copy of a receipt notice for an I-130 petition filed on behalf of the petitioner by his mother; and
- A copy of a doctoral degree earned by the petitioner on May 15, 2010.

Upon review, the AAO affirms its previous determinations that the petitioner has failed to establish his eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States. As noted previously, the petitioner and [REDACTED] divorced on [REDACTED], and he did not file the instant petition until October 22, 2007, more than two years later. In his statement submitted on motion, the petitioner states that although [REDACTED] filed the divorce petition in [REDACTED] neither he nor [REDACTED] were living in that state. The petitioner claims that he was not aware that [REDACTED] had filed for divorce and that the order was entered by default because he was not present at the hearing. He states that he did not learn he was divorced until April 2006, and that he did file the petition within two years of that date.

The language of the statute indicates clearly 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). Neither the statute nor the regulations provide for extending the filing deadline as suggested by the petitioner in cases involving a default judgment of divorce.

If valid under the jurisdiction where it was issued, a divorce judgment will be recognized as valid for immigration purposes unless it violates public policy. *Matter of Luna*, 18 I&N Dec. 381, 386 (BIA 1983). The present record contains no evidence that the petitioner's divorce judgment was invalid under the laws of [REDACTED] or violates public policy. 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 Fifteenth Judicial Circuit Court of [REDACTED]; the AAO has no legal authority to review

¹ Name withheld to protect individual's identity.

the rulings of that court. Accordingly, the AAO affirms its previous determinations, as well as that of the director, that the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because his petition was filed more than two years after his divorce from his U.S. citizen spouse. This 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.

ORDER: The director's decision of March 9, 2009 and the AAO's decisions of September 10, 2009 and May 6, 2010 are affirmed. The petition remains denied.