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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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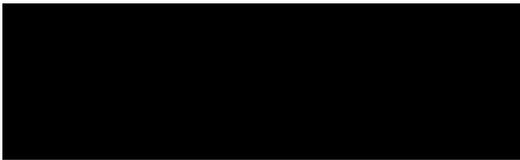
Office: VERMONT SERVICE CENTER

Date: SEP 02 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)

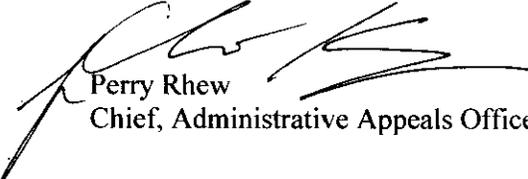
ON BEHALF OF PETITIONER:



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.

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 sustained.

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 been divorced from his ex-wife for longer than two years at the time he filed the petition and that, as such, he had failed to demonstrate the existence of a qualifying relationship with a United States citizen. Counsel filed a timely appeal on December 15, 2009. On appeal, counsel submits additional documentation regarding the petitioner's divorce from his ex-wife.

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)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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].

Section 204(a)(1)(A)(ii)(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 lost status within the past 2 years due to an incident of domestic violence . . . .
  - (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. . . .

The evidentiary 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 petitioner is a citizen of Cambodia who entered the United States as a B-2 visitor on January 22, 1995. He married C-T-<sup>1</sup> a citizen of the United States, on July 24, 2000. C-T- filed for divorce on December 4, 2006. A divorce nisi was granted on June 8, 2007, and the divorce nisi became a divorce absolute on September 7, 2007. The petitioner filed the instant Form I-360 on May 5, 2009. After considering the evidence of record, the director denied the petition on December 3, 2009.

The AAO 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 withdraws the director's decision that the petitioner has failed to demonstrate the existence of a qualifying relationship with a United States citizen.

### **Qualifying Relationship**

In his December 3, 2009 decision, the director stated that the petitioner and C-T- had divorced on December 21, 2006 and that because they had been divorced for longer than two years at the time the petition was filed on May 5, 2009, the petitioner had failed to establish the existence of a qualifying relationship pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

However, as noted by counsel on appeal, December 21, 2006 was the date on which the divorce summons was served, not the date on which the divorce became final. The divorce nisi, which was granted on June 8, 2007, became absolute on September 7, 2007. On appeal, counsel submits a certified copy of the petitioner's Certificate of Divorce Absolute, which clearly shows that the divorce was not final until September 7, 2007. As the petitioner filed the instant Form I-360 on May 5, 2009, less than two years after his divorce from C-T- became absolute on September 7, 2007, the director's determination that the petitioner had failed to establish a qualifying relationship was erroneous. The AAO, therefore, withdraws the director's decision.

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<sup>1</sup> Name withheld to protect individual's identity.

**Conclusion**

The petitioner has established that he had a qualifying relationship with his former spouse pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. He has thus overcome the sole ground for the denial of the petition.

The burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met his burden and established his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The petition is approved.