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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



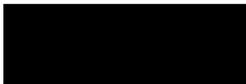
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

SEP 08 2010

IN RE:

Petitioner:



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 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 Director, Vermont Service Center, denied the immigrant visa petition. 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 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, that she resided with her husband, that her husband subjected her to battery or extreme cruelty during their marriage, that she is a person of good moral character, and that she married her husband in good faith.

The petitioner submitted a timely appeal.

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 of Somalia and a national of the Netherlands who entered the United States on September 20, 2003, on a nonimmigrant visa waiver. On August 16, 2004, the petitioner married B-K-¹, a U.S. citizen, in ██████. On September 23, 2004, B-K- 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 Register Permanent Resident or Adjust Status. On September 21, 2005,

¹ Name withheld to protect individual's identity.

B-K- withdrew the I-130 petition. On October 14, 2005, the I-485 application was denied based on the withdrawal of the I-130 petition. On June 9, 2005, the petitioner filed a second I-485 application under the Diversity Visa program. On October 14, 2005, the I-485 application was denied based on untimely filing of evidence. On November 16, 2005, the petitioner, through former counsel, filed an appeal of the denial of the petitioner's second I-485 application. On January 6, 2006, the director issued a Notice of Intent to Deny (NOID) the application. On February 22, 2007, the director denied the I-485 application because the petitioner failed to respond the NOID.

The petitioner filed this Form I-360 on April 6, 2009. On December 15, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, joint residence, good-faith marriage, abuse, and good moral character. On March 9, 2010, the petitioner, through counsel, responded with additional evidence, including a Decree of Divorce for the petitioner and B-K-, dated April 17, 2006.² The director denied the petition on April 6, 2010, 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. The director also found that the petitioner did not establish that she resided with her husband, that she was battered or subjected to extreme cruelty by her husband, that she is a person of good moral character, and that she married her husband in good faith.

On appeal, the petitioner does not contest the fact that she was divorced from her citizen spouse for more than two years at the time of filing, but states, in part, that she failed to meet this requirement due to "ineffective assistance of counsel." The petitioner states further that she has made phone contact with the [REDACTED] and is in the process of filing a complaint against counsel. As supporting documentation, the petitioner submits a personal letter dated April 27, 2010, and a Legal Services Contract signed by herself and counsel on December 9, 2006.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Although the petitioner states that the delay in filing the petition was counsel's fault, she does not provide the documentary evidence listed above to satisfy the claim of ineffective assistance of counsel. Accordingly, the petitioner's assertions regarding counsel's failure to file the petition within two years of the petitioner's divorce have no merit.

Even if the petitioner had met the *Lozada* requirements, the statutory language of the two-year, post-divorce filing deadline is clear; it prescribes no exceptions to the filing period and U.S. Citizenship and Immigration Services (USCIS) lacks the authority to waive the deadline as a matter of discretion. The

² Case No. [REDACTED] District Court of [REDACTED] Civil Court Department.

statute explicitly states 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. 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). 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.

It is also noted that the petitioner did not address the director's additional findings that she did not establish that she resided with her husband, that she was battered or subjected to extreme cruelty by her husband, that she is a person of good moral character, and that she married her husband in good faith. The petitioner therefore has not overcome these additional objections from the director. 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, the petitioner's divorce also renders her ineligible for immigrant classification under section 201(b)(2)(A)(i) based on a qualifying relationship with a citizen of the United States, as required pursuant to section 204(a)(1)(A)(iii)(II)(cc). For this additional reason, the petition may not be approved.

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.