

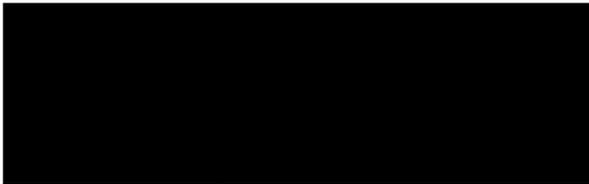
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

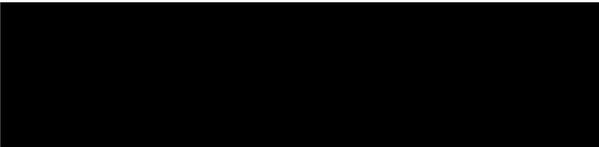
Date: FEB 28 2011

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)

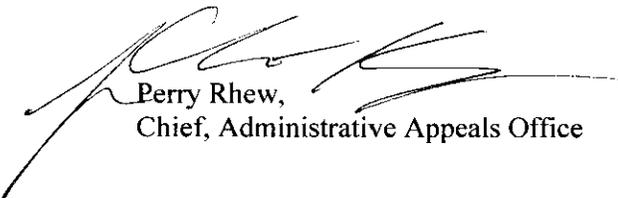
ON BEHALF OF PETITIONER:



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 petition will be approved.

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 failed to establish her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States because she had failed to demonstrate the legal termination of her first marriage. The appellate record before the AAO consists of an argument made on the Form I-290B, Notice of Appeal, and a copy and certified English translation of a document verifying the legal termination of the petitioner's prior marriage.

Applicable Law

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, 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 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.

- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any. . . .

Pertinent Facts and Procedural History

The petitioner, a citizen of Nicaragua, married E-M-¹ a citizen of the United States, on April 27, 2007. She filed the instant Form I-360 on February 17, 2010. In his May 6, 2010 request for additional evidence the director requested, *inter alia*, that the petitioner submit proof of the legal termination of her first marriage, as required by 8 C.F.R. § 204.2(c)(2)(ii). Although counsel filed a timely response to the director's request on May 18, 2010, she did not submit proof of the legal termination of the petitioner's first marriage, as requested by the director. Rather, counsel submitted a letter stating that the petitioner was still legally married to E-M-.

As counsel's response did not address the director's request, the record before him at the time he issued his decision did not satisfy 8 C.F.R. § 204.2(c)(2)(ii) because there was no proof of the legal termination of the petitioner's first marriage. As the petitioner, therefore, had not established that she had been legally free to marry E-M-, she had not demonstrated the existence of a qualifying relationship with a citizen of the United States pursuant to 8 C.F.R. § 204.2(c)(1)(i). Accordingly, the director denied the petition on June 15, 2010. Counsel timely filed the instant appeal on July 19, 2010.

On appeal, counsel submitted a certified English translation of what she asserted is the petitioner's divorce certificate. However, she did not submit a copy of the divorce certificate itself. On December 27, 2010,² we issued a request for additional evidence (RFE), and requested a copy of the petitioner's original Spanish-language divorce certificate underlying the translation submitted by counsel. Counsel submitted a timely response, and sent the requested document.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The sole issue before the AAO on appeal is whether the petitioner has demonstrated the existence of a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of such a relationship. As noted, the record now contains a copy of the petitioner's original Spanish-language divorce certificate underlying the translation originally submitted by counsel, and we do not question the validity of this document. Accordingly, the petitioner has satisfied 8 C.F.R. § 204.2(c)(2)(ii) in that she has submitted proof of the legal termination of all prior marriages and her resultant eligibility to marry E-M- legally. The petitioner,

¹ Name withheld to protect individual's identity.

² Upon receipt of correspondence from counsel including her new address, we reissued the RFE on January 10, 2011 and sent it to her new address.

therefore, has demonstrated the existence of a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of such a relationship.

Conclusion

The petitioner has demonstrated the existence of a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of such a relationship, and we concur with the director's determination that the petitioner meets all other statutory requirements. The petitioner, therefore, has established that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden and the appeal will be sustained.

ORDER: The director's June 15, 2010 decision is withdrawn. The appeal is sustained, and the petition is approved.