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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: VERMONT SERVICE CENTER Date:

JAN 05 2011

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:

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 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 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 petition remains denied.

The petitioner seeks immigrant classification pursuant to 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.

On July 9, 2010, the director denied the petition, determining that the petitioner had not established a qualifying relationship with a United States citizen spouse and that he was eligible for immediate relative classification based on a qualifying relationship. The director noted, although did not discuss, that the petitioner had also failed to establish that he had been subjected to battery or extreme cruelty perpetrated by a United States citizen and had failed to establish that he entered into the marriage in good faith.

The petitioner submits a Form I-290B, Notice of Appeal or Motion, and requests that this matter be judged under the laws that were in force at the time his problems arose. The petitioner attaches a letter from the Office of Congressman Ron Paul asking that the petitioner fill out a constituent satisfaction survey. As the petitioner checked the box on the Form I-290B indicating that his brief and/or additional evidence was attached, the record is considered complete.

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 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 evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

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 filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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, of . . . the self-petitioner

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native of Slovakia and a citizen of Australia. He entered the United States on or about March 28, 1998. He married S-K-,¹ the United States citizen spouse, on April 10, 1998 in Florida. On February 23, 1999, a Final Judgment of Dissolution of Marriage was filed terminating the marriage between the petitioner and S-K-. On February 10, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he had resided with S-K- from March 1998 to June 1998.

Qualifying Relationship

The petitioner in this matter was divorced from the claimed abusive United States citizen in February 1999 and filed the Form I-360 ten years later. The language of the statute clearly indicates 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. 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 the petitioner in this matter was divorced from his spouse for more than two years at the time of filing the petition, the petitioner does not satisfy this requirement and thus is not eligible to file a Form I-360 petition based upon this marriage. There is no exception to this requirement. The petitioner does not provide any evidence on appeal overcoming the director’s decision. Accordingly, we concur with the director’s determination that the petitioner did not establish a qualifying relationship with his former spouse.

Similarly, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with his former spouse, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

¹ Name withheld to protect the individual’s identity.

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The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.