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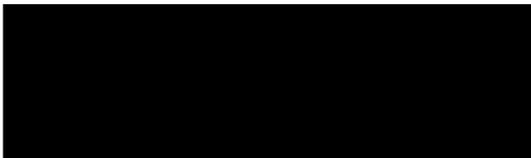
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



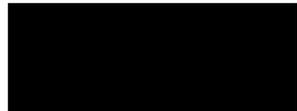
**U.S. Citizenship
and Immigration
Services**

By



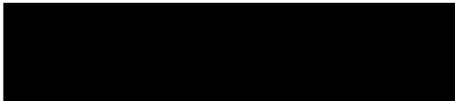
DATE: OFFICE: VERMONT SERVICE CENTER

FILE:



JUL 25 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:

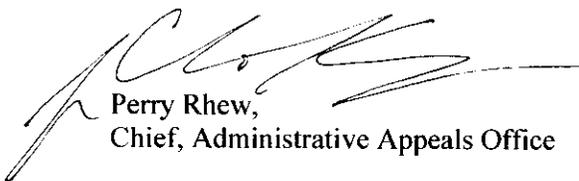
SELF-REPRESENTED

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 \$630. 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) summarily dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider.¹ The motion to reopen will be granted. The petition will remain denied.

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 citizen of the United States.

The director denied the petition on January 29, 2010 on the basis of his determination that the petitioner had failed to demonstrate the existence of a qualifying relationship with a citizen of the United States because he filed the petition more than two years after divorcing his former wife.² We summarily dismissed the petitioner's subsequent appeal on August 13, 2010 because he failed to specifically identify any erroneous conclusion of law or statement of fact made by the director, pursuant to 8 C.F.R. § 103.3(a)(1)(v).

The petitioner filed the instant motion to reopen and reconsider on September 14, 2010 and he submitted additional testimonial evidence from himself and two of his friends. The petitioner's submission does not meet the requirements for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). It does however meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Accordingly, we will reopen our August 3, 2010 decision summarily dismissing the appeal.

Neither [REDACTED] address the basis of our September 14, 2010 decision: the petitioner's failure to specifically identify any erroneous conclusion of law or statement of fact made by the director. [REDACTED] does either individual address the basis of the director's January 29, 2010 decision: the petitioner's failure to demonstrate the existence of a qualifying relationship with a citizen of the United States because he filed the petition more than two years after divorcing his former wife. Their statements, therefore, do not establish that our August 13, 2010 decision was issued in error.

[REDACTED] does the petitioner's September 7, 2010 statement establish that our prior decision was issued in error. Although the petitioner notes, correctly, that his prior Forms I-360 were filed within two years of his divorce from his former wife, the filing dates of those petitions are not relevant here. Nor are the petitioner's statements setting forth the reasons why he abandoned one of his prior

¹ The petitioner indicated on the Form I-290B, Notice of Appeal of Motion that he was appealing our prior decision. However, because the regulations contain no provision for the appeal of a decision made by the AAO, we will adjudicate the matter as a motion to reopen and reconsider.

² The petitioner and his former wife divorced on August 31, 2005. The petitioner filed the instant petition on October 15, 2008. This is the third Form I-360 the petitioner has filed. The first, [REDACTED], was filed on December 5, 2005 and denied on February 13, 2007, and we dismissed a subsequent appeal on May 18, 2007. The second, [REDACTED] was filed on May 25, 2007 and denied due to abandonment on June 13, 2008.

petitions relevant. If the petitioner wishes to have a decision on a prior petition reopened or reconsidered, he must file a motion on the denial of the prior petition.

The petitioner also asserts on motion that he failed to file the instant petition before the expiration of the two-year post-divorce filing deadline imposed by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act because the abuse to which he was subjected by his former wife led to a “disoriented [m]ental state” which kept him from reaching out to his attorney and filing the petition in timely fashion. The filing deadline contained at section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is not subject to equitable tolling.

Although courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation, the petitioner cites no case finding visa petition filing deadlines subject to equitable tolling. *Compare Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005) (time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) with *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). The two-year, post-divorce filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive the statutory deadline.³

The petitioner’s assertions on motion to reopen fail to establish that our August 13, 2010 decision was issued in error. Because he filed the petition more than two years after divorcing his former wife, the petitioner has failed to demonstrate the existence of a qualifying relationship with a citizen of the United States. Furthermore, because the petitioner has failed to demonstrate the existence of a qualifying relationship with a citizen of the United States, he has also failed to establish his corresponding eligibility for immediate relative classification on the basis of such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). For this additional reason, the petition may not be approved.⁴

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. The prior decision of the AAO will be affirmed.

ORDER: The August 13, 2010 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition remains denied.

³ Even if the deadline were found to be a statute of limitations, the petitioner would still have to show that he exercised due diligence in pursuit of his claim. *See Albillo-DeLeon v. Gonzalez*, 410 F.3d at 1100.

⁴ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).