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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

Date: **JUN 08 2011** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

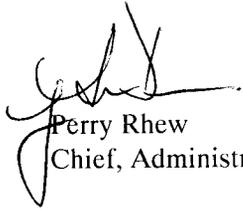
ON BEHALF OF PETITIONER:



**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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

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 petitioner did not establish the requisite qualifying relationship and eligibility for immigrant classification based upon that relationship, stating that the termination of his marriage occurred more than two years prior to the petition's filing date. On appeal, counsel states, in part, that the petition was timely filed.

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 and citizen of Mexico who entered the United States without inspection in 1999. On October 22, 2002, the petitioner married a U.S. citizen in Nevada. On March 10, 2008, the petitioner and his wife were divorced. The petitioner filed the instant Form I-360 on March 10, 2010.

The director denied the petition on November 9, 2010, finding that the petitioner did not establish the requisite qualifying relationship and eligibility for immigrant classification based upon that relationship because the qualifying relationship did not exist within two years of the filing date.

The language of the statute clearly indicates that 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). As discussed above, the petitioner and his U.S. citizen wife were divorced on March 10, 2008, and the petitioner filed the instant Form I-360 on March 10, 2010. Therefore, the petitioner filed the instant petition within the required two-year time period following the termination of his qualifying marriage. Accordingly, we withdraw the director’s determination that the petitioner did not file within the required two-year time period following the termination of his qualifying marriage.

The petition may not be approved, however, as the director did not address the remaining issues, including whether the petitioner has established “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,” joint residence, abuse, good moral character, and good-faith entry into the marriage. Accordingly, the case will be remanded for the director to determine whether the petitioner qualifies for benefits under section 204(a)(1)(A)(iii) of the Act. The director must afford the petitioner reasonable time to provide evidence pertinent to his eligibility under section 204(a)(1)(A)(iii) of the Act, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s November 9, 2010 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.