

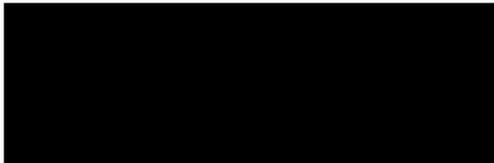
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 08 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 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 Director, Vermont Service Center, denied the immigrant visa petition and 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 his United States citizen spouse.

The director denied the petition on August 10, 2010, determining that the petitioner had not established a qualifying relationship or eligibility for immigrant classification based on a qualifying relationship. On appeal, the petitioner submits a brief and a copy of his divorce decree from his first wife.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 set forth 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

Pertinent Facts and Procedural History

The petitioner is a native of Argentina and a citizen of Canada. The petitioner married N-G-¹, the claimed abusive United States citizen on December 31, 1990 in Canada. He entered the United States on or about January 1, 2000. On August 25, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On January 26, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director denied the petition on August 10, 2010, determining that the petitioner had not established a qualifying relationship or eligibility for immigrant classification based on a qualifying relationship. The petitioner submits a timely filed Form I-290B, Notice of Appeal or Motion and a brief in support of the appeal.

Qualifying Relationship

The petitioner in this matter states his belief that N-G- is a native born U.S. citizen. A review of United States Citizenship and Immigration Services (USCIS) records relating to N-G- reveals that: N-G- is not a native born U.S. citizen, but rather was born in Mexico; she never obtained lawful permanent resident status in the United States; and she has not claimed to have derived or acquired U.S. citizenship. As the petitioner is not married to a United States citizen or lawful permanent resident, he is ineligible to seek relief under section 204(a)(1)(A)(iii) or (B)(ii) of the Act. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with his spouse.²

Eligibility for Immediate Relative Classification

The petitioner has also failed to demonstrate his eligibility for immigrant classification based on a qualifying relationship. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on his relationship to the abusive spouse. As the petitioner has not established that his spouse is a U.S. citizen or lawful permanent resident, he is ineligible for immediate relative classification under section 204(b)(2)(A)(i) of the Act or section 203(a)(2)(A) of the Act, based on his relationship with N-G-, as required by section 204(a)(1)(A)(iii)(II)(cc) or section 204(a)(1)(B)(ii)(II)(cc) of the Act.

¹ Name withheld to protect the individual's identity.

² The director noted in the denial letter that the petitioner had not submitted evidence of his divorce from his first wife. The petitioner has submitted such evidence on appeal; however, because the evidence does not overcome the bases for the denial of the petition, the relevance of the divorce decree shall not be further addressed.

Conclusion

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The petition remains denied.