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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: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 15 2011

IN RE: [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)

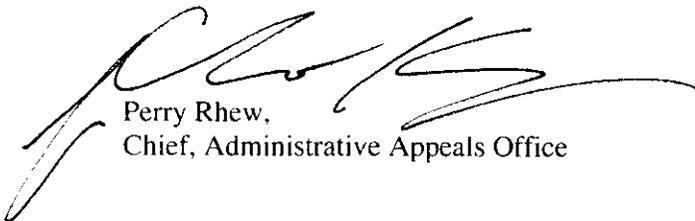
ON BEHALF OF PETITIONER:  
[REDACTED]

**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 [REDACTED]. 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 determined that the petitioner failed to establish that he had a qualifying relationship with his former wife, and denied the petition accordingly. On appeal, the petitioner submits a copy of his marriage certificate to prove his relationship to his former wife, and he reasserts his eligibility for immigrant classification.

*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, 8 U.S.C. § 1151(b)(2)(A)(i), 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 self-petition under this provision 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, 8 U.S.C. § 1154(a)(1)(J) 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be

considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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.

\* \* \*

- (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, married R-M-,<sup>1</sup> a citizen of the United States, on April 23, 2001. The record reflects that the couple divorced on August 17, 2006. *See Divorce Decree*, Cause No. CC- [REDACTED], filed in Starr County, Texas on Aug. 17, 2006. The petitioner filed the instant Form I-360 on December 21, 2009.

On February 16, 2010, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on August 17, 2010, and the petitioner filed a timely appeal.

#### *Analysis*

On appeal, the petitioner claims that he had a valid marriage with his former wife, that she was abusive, and that he does not know whether he is divorced from her because he never went to court. *See Letter from [REDACTED]*, dated Sept. 13, 2010. However, the petitioner stated that he was divorced on the Form I-360 and submitted a copy of his divorce decree in response to the director's RFE. *Divorce Decree*. On appeal, the petitioner claims that he only remembers one occasion when his former wife "obligated [him] to sign a paper but she never wanted to tell [him] what the paper was or what the paper said," actions he describes as abusive. To the extent that the petitioner suggests his divorce decree is invalid, we have no jurisdiction to consider his claim. A divorce will be recognized for immigration purposes where it is valid under the laws of the jurisdiction granting the divorce and is considered valid in the place where the parties resided at the time of the divorce. *Matter of Weaver*, 16 I&N Dec. 730, 733 (BIA 1979). Here, the record lacks any evidence that the petitioner's divorce was invalid under the law of Texas, where the petitioner and his former wife resided at the time.

Although a divorced spouse may remain eligible for immigration classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must "demonstrate[] a connection between the legal termination of the marriage within the past 2 years and" the abuse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Here, the petitioner's marriage was terminated on August 17, 2006, and he filed his Form I-360 on December 21, 2009, which was more than three years and four months after the divorce. Accordingly, the petitioner failed to file his Form I-360 within two years of the termination of his marriage, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

#### *Conclusion*

The petitioner has failed to establish a qualifying relationship with his former wife at the time he filed his petition. Accordingly, the petitioner is ineligible for immigrant classification under section

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<sup>1</sup> The petitioner's former spouse's name has been withheld to protect the individual's identity.

204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

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.

**ORDER:** The appeal is dismissed.