

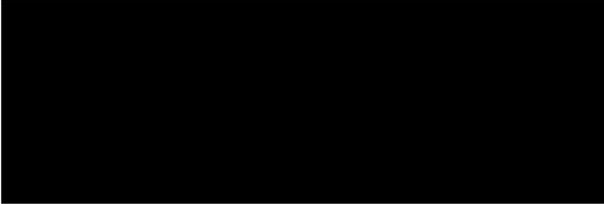
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

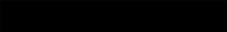
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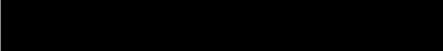
DATE:

Office: VERMONT SERVICE CENTER

FILE: 

MAY 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:

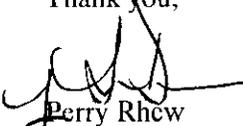


INSTRUCTIONS:

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 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 determined that the petitioner had not established that he had a qualifying relationship with a United States citizen. Prior counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion and a statement and documents in support of the appeal.

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

Facts and Procedural History

The petitioner is a native and citizen of the Dominican Republic. He entered the United States in or about August 1994 without inspection. He married A-V-,¹ the claimed abusive United States citizen on March 11, 1995 in the State of New York. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner on April 24, 1996. The Form I-130 was denied on April 17, 1998. On August 27, 2007 a Judgment of Divorce was issued terminating the marriage between the petitioner and A-V-. On September 18, 2007, the Judgment of Divorce was filed in the County Clerk's Office in New York County. On October 26, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he last resided with A-V- in August 1999. Upon review of the record, the director determined that the petitioner had not established that a qualifying relationship with the claimed abusive United States citizen spouse existed when the petition was filed. The petitioner's prior counsel timely submitted a Form I-290B, Notice of Appeal or Motion, a brief, and documents in support of the appeal.

Qualifying Relationship

The petitioner has failed to establish that he had a qualifying relationship with a United States citizen when the petition was filed on October 26, 2009. The language of the statute clearly states that an alien *who is the spouse of a United States citizen* may self-petition for immigrant classification. The language of the statute also clearly provides 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). In this matter, the divorce judgment terminating the marriage was filed on September 18, 2007. On appeal, prior counsel asserts that although the divorce judgment was filed on September 18, 2007, A-V- was to be served with a copy of the divorce judgment at her last known address and she was not served with the Judgment of Divorce until September 27, 2007. Counsel further asserts that as A-V- "had about 30 days to appeal the Judgment or litigate the matter" the divorce judgment did not become final until October 27, 2007. We disagree with prior counsel's analysis. The Judgment of Divorce was issued on August 27, 2007 and filed on September 18, 2007. The date the Judgment of Divorce was filed legally terminated the marriage.

The AAO acknowledges the May 7, 2010 letter submitted by the petitioner's new attorney to the petitioner's prior counsel informing prior counsel that the petitioner wished to vacate the divorce judgment to amend and/or supplement the divorce grounds. However, the letter does not alter the relevant facts in this matter. The petitioner's marriage to A-V- was legally dissolved and filed as of

¹ Name withheld to protect the individual's identity.

September 18, 2007 and the Form I-360 was not filed within two years of the termination of the marriage. The record does not establish that the petitioner had a qualifying relationship with a United States citizen when the petition was filed.

Immigrant Classification

Beyond the decision of the director, as the petitioner has not established that he has a qualifying relationship with a United States citizen, he is also precluded from establishing that he is eligible for immediate relative classification based on his relationship with A-V-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. In this matter his relationship to the claimed abusive spouse has not been established.

Conclusion

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.