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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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DATE: **MAY 16 2011**

OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

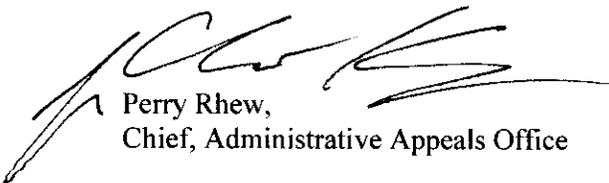
SELF-REPRESENTED

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 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had not established her eligibility for immigrant classification based upon a qualifying relationship with a lawful permanent resident of the United States because she and her former husband divorced more than two years before the petition was filed. The petitioner filed a timely appeal. On appeal, the petitioner submits a brief and additional evidence.¹

Applicable Law

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States remains eligible to self-petition under these provisions if he or she "demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse. . . ."

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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].

¹ The petitioner marked the box at section two of the Form I-290B to indicate that a brief and/or additional evidence would be sent within 30 days. However, to date, thirteen months later, we have not received an additional brief or evidence. Accordingly, we deem the record complete and ready for adjudication.

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

* * *

- (B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the U.S. lawful permanent resident].

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) 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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .

Pertinent Facts and Procedural History

The petitioner, a citizen of Mexico, married B-A,² a lawful permanent resident of the United States, on April 5, 1994. They divorced on May 28, 1998.³ The petitioner filed the instant Form I-360 on July 22, 2008. The director issued three subsequent requests for additional evidence, to which the petitioner filed timely responses. After considering the evidence of record, including the petitioner's responses to the requests for additional evidence, the director denied the petition on March 10, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

² Name withheld to protect individual's identity.

³ The record contains a copy of a divorce judgment issued by the Superior Court of California, Los Angeles County, on May 5, 1998.

Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification

As noted, this petition was filed more than ten years after the petitioner and B-A- divorced. On appeal, the petitioner does not dispute the director's finding that the filing of a Form I-360 more than two years after the legal termination of an alien's marriage to his or her lawful permanent resident spouse precludes approval of the petition. Instead, she asserts that although she has been separated from B-A- since September 1997, she did not know that the marriage had been lawfully terminated and asserts she did not receive proper notice of the divorce proceeding.

We are not persuaded by the petitioner's argument. First, we note that when she filed the petition, the petitioner herself marked part 3 of the Form I-360 to indicate that she was divorced. Second, if the petitioner wishes to challenge the validity of the divorce judgment, she must do so in the venue in which the judgment was entered, in this case the Superior Court of California, Los Angeles County; the AAO has no legal authority to review the rulings of the court that issued the divorce decree. A divorce decree is generally valid for immigration purposes if it was valid under the laws of the jurisdiction where it was granted. *Matter of Hann*, 18 I.&N. Dec. 196 (BIA 1982).

The language of section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, which sets forth the two-year filing deadline at issue here, is clear: in order to remain eligible for immigrant classification despite no longer being married to a lawful permanent resident of the United States, the petitioner must establish that she was the bona fide spouse of a lawful permanent resident "within the past two years." The petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act because her marriage to a lawful permanent resident of the United States was legally terminated more than two years before she filed this petition.

Conclusion

The petitioner has failed to establish a qualifying relationship with a lawful permanent resident of the United States and her corresponding eligibility for preference immigrant classification because her marriage to B-A- was lawfully terminated more than two years before the petition was filed. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, and her 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.