

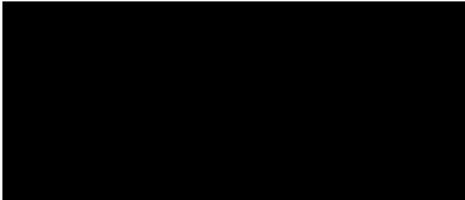
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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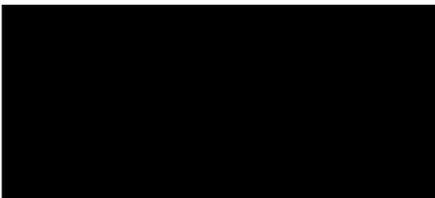
DATE: MAY 25 2011 OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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:

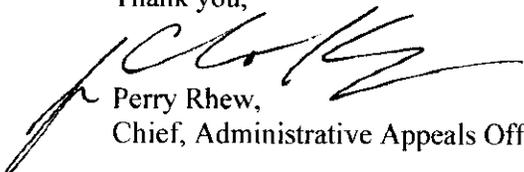


INSTRUCTIONS:

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: Although the service center director initially approved the immigrant visa petition, he subsequently issued a notice of intent to revoke (NOIR), and ultimately revoked, approval of the petition. 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 United States citizen.

The director revoked approval of the petition on the basis of his determination that because she married another man during the pendency of the petition, she had failed to establish her eligibility for immigrant classification based upon her former marriage to a citizen of the United States. On appeal, counsel submits a brief reasserting the petitioner's eligibility.

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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).

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 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:

- (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 . . . if he or she:

* * *

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

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.
- (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. . . .

Remarriage during the pendency of a self-petition filed under section 204(a)(1)(A)(iii) of the is discussed at 8 C.F.R. § 204.2(c)(1)(ii):

Legal status of the marriage . . . After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

Pertinent Facts and Procedural History

The petitioner, a citizen of Canada, married K-R-¹ a citizen of the United States, on October 8, 1994. They divorced on August 29, 2003.²

The petitioner filed the instant Form I-360 on June 19, 2003, and it was approved on May 13, 2004. In 2009, in connection with her application to adjust status, the petitioner submitted a copy of her divorce decree ending her marriage to K-R- and a copy of the certificate of her marriage to her second husband on December 31, 2003. As the petitioner's remarriage had occurred during the pendency of the petition, the director issued a NOIR on March 5, 2010 and, finding the petitioner's response insufficient to overcome his proposed ground for revocation, he revoked approval of the petition on July 8, 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 revoking approval of this petition. Revocation of the approval of this petition was therefore proper pursuant to section 205 of the Act and 8 C.F.R. § 205.2(a).

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As noted, the petitioner remarried during the pendency of the petition, and the regulation at 8 C.F.R. § 204.2(c)(1)(ii) specifically states that the petitioner's remarriage during the pendency of a self-petition is a basis for denial. Accordingly, the director properly revoked approval of the petition.

On appeal, counsel states that section 204(h) of the Act, 8 U.S.C. § 1154(h) "states that remarriage of an alien whose petition has been approved may not be the sole basis for revoking an approved self-petition," and argues that the language of section 204(h) of the Act supersedes 8 C.F.R. § 204.2(c)(1)(ii).

Section 204(h) of the Act states that the remarriage of an alien shall not be the basis for revocation of an approved self-petition. Section 204(h) of the Act is not applicable here because the petition had not yet been approved at the time of the petitioner's remarriage. Moreover, the statute, regulations, and legislative history of the self-petitioning provisions and subsequent statutory amendments all demonstrate that a self-petitioner's remarriage while the Form I-360 is pending precludes its approval.

¹ Name withheld to protect individual's identity.

² The record contains a copy of a divorce decree issued by the District Court of the Twentieth Judicial District of Colorado, filed on August 29, 2003.

I. *The 1994 amendments to section 204 of the Act, 8 U.S.C. § 1154*

Congress first granted an abused spouse the ability to self-petition in 1994, when it enacted the *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. 103-322, 108 Stat. 1796 (Sep. 13, 1994). Section 40701, located in Subtitle G, amended section 204 of the Act, to permit an abused spouse and children of a United States citizen or lawful permanent resident to file a petition for immigrant status. Congress observed the following:

Under current law only the United States citizen or lawful permanent resident spouse is authorized to file a relative petition, and this spouse maintains full control over the petitioning process. He or she may withdraw the petition at any time for any reason. The purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.³

Under the amended section 204 of the Act, an abused alien spouse would no longer have to rely on her abusive U.S. citizen or lawful permanent resident spouse to petition for immigrant status on her behalf.

On March 26, 1996, the legacy Immigration and Naturalization Service (INS), predecessor to the USCIS, promulgated an interim rule to implement the changes mandated by section 40701 of the *Violent Crime Control and Law Enforcement Act of 1994*.⁴ The rule outlined the various provisions for abused spouses of U.S. citizens and lawful permanent residents to file a self-petition. In explaining the interim rule, the legacy INS stated the following:

The rule further provides, however, that a pending spousal self-petition will be denied or an approved self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser.

As noted, the implementing regulatory language at 8 C.F.R. § 204.2(c)(1)(ii) states the following:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The

³ See H.R. Rep. 203-395, available at 1993 WL 484760 at p. 41.

⁴ See 61 FR 13061 (Mar. 26, 1996), available at 1996 WL 131508.

self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

Finally, the interim rule at 8 C.F.R. § 205.1(a)(3)(i)(E) established that approval of a self-petition made under section 204 of the Act is automatically revoked as of the date of approval:

[u]pon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act.

Thus, as early as 1996, section 204 of the Act was interpreted as requiring a self-petitioning abused spouse to be married at the time of filing and not remarry prior to becoming a lawful permanent resident.⁵

II. *The 2000 Amendments to Section 204 of the Act, 8 U.S.C. § 1154*

In 2000, Congress further amended section 204 of the Act by enacting the *Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). Division B of that Act contained the *Violence Against Women Act of 2000* (VAWA 2000). Pursuant to VAWA 2000 and the VTVPA, seven groups of battered aliens became eligible to self-petition for classification as immediate relatives or preference immigrants under sections 204(a)(1)(A)(iii) or (iv), or 204(a)(1)(B)(ii) or (iii) of the Act.⁶

The Battered Immigrant Women Protection Act of 2000 is contained within the VTVPA.⁷ In VTVPA § 1502(a), Congress made three findings. First, it found that the goal of VAWA 1994 was to

⁵ In a policy memo from T. Alexander Aleinikoff, Executive Associate Commissioner, entitled "Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents," (April 16, 1996), the legacy INS Office of Programs emphasized the regulatory requirement that "[a] pending spousal self-petition will be denied or the approval of a spousal self-petition revoked, however, if the self-petitioning spouse remarries before he or she becomes a lawful permanent resident."

⁶ Group 1 — abused alien spouses of U.S. citizens or lawful permanent residents (LPRs). Group 2 — alien spouses whose children are abused by the U.S. citizen or LPR spouse. Group 3 — alien children abused by their U.S. citizen or LPR parent. Group 4 — divorced abused spouses of U.S. citizens or LPRs who demonstrate a connection between the abuse suffered and the divorce and who file a petition within 2 years of the divorce. Group 5 — abused widowed spouses of U.S. citizens who file a petition within 2 years of the date of U.S. citizen's death. Group 6 — abused alien spouses of former U.S. citizens or LPRs who lost their immigration status within the last two years related to or due to an incident of domestic violence. Group 7 — abused alien children of former U.S. citizens or LPRs who lost their immigration status within the last two years related to or due to an incident of domestic violence. See VAWA §§ 40701-02; VTVPA §§ 1503(b) and (c).

⁷ VTVPA § 1501.

remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships.⁸ Second, it found that providing battered immigrant women and children with protection from deportation freed them to cooperate with law enforcement and prosecutors, without fear that the abuser would retaliate by withdrawing or threatening to withdraw, access to an immigration benefit under the abuser's control.⁹ Third, Congress found that there are several groups of battered women and children who do not have access to the immigration protections of VAWA 1994.¹⁰ VTVPA §§ 1503(b) & (c) amended section 204 of the Act to permit an abused alien spouse, who had already terminated her marriage to the abusive U.S. citizen or lawful permanent resident, to self-petition, provided that the alien demonstrated a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the spouse.¹¹ Prior to this amendment, a self-petitioning abused spouse was required to be married to the abusive spouse at the time of filing the petition.

Congress also amended section 204(h) of the Act to permit an abused self-petitioning spouse *whose petition had already been approved* to remarry without having the approval of his or her petition revoked. Under the maxim of statutory construction *expressio unius est exclusio alterius*,¹² the fact that Congress specifically addressed the issue of remarriage in the context of revocations but did not address it elsewhere means that Congress did not intend to change any other provisions related to remarriage. Under section 204(h) of the Act, remarriage of the alien after approval of the petition would not serve as the sole basis for revocation of the petition. Congress did not refer to the issue of remarriage in the other provisions of section 204 pertaining to abused spouses.

Consequently, this interpretation of section 204 of the Act, that the remarriage of an abused spouse while his or her petition is pending served to disqualify him or her, is reasonable, given that Congress provided only that *remarriage after approval* would not disqualify the abused spouse. The inclusion of remarriage in section 204(h) of the Act as a non-disqualifying factor, after petition approval, strongly suggests that remarriage prior to petition approval is disqualifying.

This interpretation is also consistent with the definition of an "immediate relative" at section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i), which states, in pertinent part, the following:

In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from

⁸ VTVPA § 1502(a)(1).

⁹ VTVPA § 1502(a)(2).

¹⁰ VTVPA § 1503(a)(3).

¹¹ Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

¹² Mention of one thing implies exclusion of another. See *Black's Law Dictionary*, Seventh edition, 602 (1999).

the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date **and only until the date the spouse remarries**. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act [i.e., the VAWA self-petitioning provisions] remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

(Emphasis added.)

Further, this interpretation is consistent with the Congressional intent of *VAWA 1994* and *VAWA 2000*. The motivation of Congress in 1994 was to provide a means for an abused immigrant spouse to obtain immigration benefits over which her abusive spouse held complete control.¹³ Because of such control, the immigrant spouse could hardly report the abuse to the police, or seek government assistance, for fear of jeopardizing any chance to obtain lawful status in the United States. VAWA 1994 limited the abusive spouse's control by permitting the abused spouse to self-petition. However, the self-petitioning spouse was still required to be married to the abusive U.S. citizen or LPR at the time the petition was filed.¹⁴ Congress found this unsatisfactory, such that in 2000, it further amended section 204 to permit an abused immigrant spouse to file a self-petition, even though the abusive marriage had been legally terminated.¹⁵

The abused spouse was required to demonstrate 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.¹⁶ Congress also provided that remarriage, after the petition had been approved, would not be a basis for revoking the petition.¹⁷

While Congress broadened the eligibility requirement to include divorced spouses filing within two years of the divorce, it decided only to include the possibility of remarriage in the section pertaining to divorced spouses that had approved petitions but had not adjusted status or entered the United States as a permanent resident. In 2006, Congress made further amendments to provisions related to abused spouses and children.¹⁸ Again, however, Congress made no provisions for a remarried petitioner to self-petition based upon her prior abusive marriage. The fact that in three separate amendments to the original VAWA statute Congress left alone USCIS's

¹³ H.R. Rep. 203-395, available at 1993 WL 484760 at p.41.

¹⁴ See 8 C.F.R. § 204.2(c)(1)(ii)(1996).

¹⁵ VTVPA § 1503.

¹⁶ Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

¹⁷ VTVPA § 1507(b), amending 8 U.S.C. § 204(h).

¹⁸ Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law No. 109-162, (Jan. 5, 2006).

interpretation that remarriage prior to petition approval would result in a denial is compelling evidence that it considered the interpretation and found it an accurate view of Congressional intent. This fact is significant because “[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning.”¹⁹ See also *Delmas v. Gonzalez*, 422 F.Supp. 2d 1299 (S.D. Fla. 2005), (affirming that an alien who remarried prior to the approval of her self-petition did not qualify for immigrant classification).

For all of these reasons, the petitioner is ineligible for immigrant classification based upon her relationship with K-R- because she remarried during the pendency of this petition. She has not demonstrated the qualifying relationship requisite for immigrant classification under section 204(a)(1)(A)(iii) of the Act or her eligibility for immediate relative classification based on such a relationship.

Conclusion

The petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because she remarried while the instant petition as pending and thereby lacked a qualifying relationship to her prior, abusive spouse. The petitioner’s remarriage during the pendency of this petition provided the director with good and sufficient cause to revoke the approval of the petition pursuant to section 205 of Act.

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. Approval of the petition remains revoked.

¹⁹ *Bledsoe v. Palm Beach County Soil and Water Conservation District*, 133 F.3d 816, 822 (11th Cir. 1998), citing *Florida National Guard v. Federal Labor Relations Authority*, 699 F.2d 1082, 1087 (11th Cir. 1983).