



U.S. Citizenship
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Services

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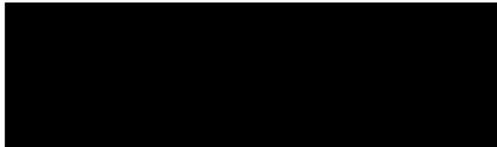
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IN RE:

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, initially approved the petition. Upon subsequent review, the director revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

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 revoked approval of the petition on August 23, 2011, determining that the petitioner had not established a qualifying relationship or eligibility for immigrant classification based on a qualifying relationship. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion.

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 and citizen of Haiti. He entered the United States on or about February 19, 2005 on a K-1 visa. On March 2, 2005, the petitioner married N-G-¹ the claimed abusive United States citizen (USC). On August 17, 2005, a Final Judgment of Divorce terminating the marriage between the petitioner and N-G- was filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. [REDACTED]. On April 25, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On November 27, 2008 the petitioner entered into a second marriage. On January 22, 2010, the director erroneously approved the Form I-360. Upon subsequent review of the record, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition as the petitioner had remarried while the Form I-360 was pending and thus a qualifying relationship or eligibility for immigrant classification based on a qualifying relationship no longer existed between the petitioner and the claimed abusive USC spouse. The petitioner did not provide a response to the NOIR and the director revoked approval of the Form I-360 on the grounds set out in the NOIR. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating that a brief or supplemental evidence would be submitted to the AAO within 30 days. The record on appeal includes no further evidence or brief. The record is considered complete. Counsel asserts on the Form I-290B, that the delay by United States Citizenship and Immigration Services (USCIS) in adjudicating the Form I-360 operated to deny the petitioner the fundamental right to marry. Counsel contends the petitioner was denied due process and equal protection as guaranteed under the U.S. Constitution.

The Act Does Not Permit Remarriage of the Self-Petitioner Prior to the Approval of the Petition

The regulatory language at 8 C.F.R. § 204.2(c)(1)(ii) states:

A spousal self-petition must be [A]fter 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.* (Emphasis added)

In this matter, the petitioner was no longer married to the claimed abuser when he filed the Form I-360 petition but filed the Form I-360 within two years of the termination of the marriage. He, however, remarried while the Form I-360 was pending. Thus, the language of the implementing regulation cited above, which clearly states that a petitioner's remarriage will be the basis for the denial of the petition, mandates the denial of the instant petition. Accordingly, we concur with

¹ Name withheld to protect the individual's identity.

the director's determination that the petitioner has not established a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act due to his divorce from N-G- and his remarriage while this petition was pending.

Eligibility for Immediate Relative Classification under Section 201(b)(2)(A)(i) of the Act

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 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. During the pendency of this petition, the petitioner and N-G- divorced and the petitioner remarried another individual. Accordingly, he is ineligible for immediate relative classification under section 204(b)(2)(A)(i) of the Act based on his relationship with N-G-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The Petitioner was Not Denied Due Process

Counsel's claim that the petitioner was not accorded due process is without merit. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to this matter, and notified the petitioner of the deficiencies in the record before revoking approval of the petition. The petitioner has not met his burden of proof and the denial of the instant petition is the proper result under the statute and regulations.

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 approval of the petition remains revoked.