



U.S. Citizenship  
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Services

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DATE: **APR 24 2012**

Office: VERMONT SERVICE CENTER

File: 

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:

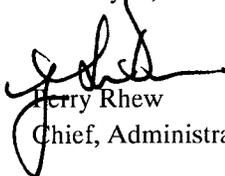


**INSTRUCTIONS:**

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,

  
Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The AAO's previous decision will be affirmed and the petition will remain denied.

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 a United States citizen.

The director denied the petition, after determining that the petitioner had not established she had a qualifying relationship with a United States citizen (USC) or that she is eligible for immediate relative classification based on a qualifying relationship. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a supplemental brief, and additional documentation.

#### *Applicable Law and Regulations*

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a USC may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the USC 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 petitioner'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)(B)(ii) 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. On August 31, 2004 she married L-M-<sup>1</sup> who is now a United States Citizen (USC)<sup>2</sup> in the Dominican Republic. She was paroled into the United States on or about June 10, 2006. On May 21, 2007, the marriage between the petitioner and L-M- was terminated in a divorce action in the Dominican Republic. On November 26, 2007, the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, which was denied because the petitioner failed to submit criminal history clearances from Herrera, Santo Domingo. On December 4, 2009, the petitioner filed the instant Form I-360. The director determined that the petitioner had not established a qualifying relationship with the abusive spouse when the petition was filed and had not established eligibility for immediate relative classification based on a qualifying relationship. The AAO affirmed the director's decision. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating she is filing a motion to reopen and a motion to reconsider the AAO's previous decision. Counsel submits a brief and additional evidence. Counsel asserts that a review of the complete divorce decree, available for the first time on motion, shows that the petitioner was not properly served and thus the Dominican divorce is not a valid divorce and the petitioner remains married to the abusive USC spouse. Counsel contends that the Dominican divorce decree also shows that the divorce was "for cause," and the Dominican law governing "for cause" divorces is different from that of a mutual consent divorce. Counsel indicates that a Dominican lawyer has advised that there are a number of defects in the Dominican divorce but that to file the appropriate paperwork would take a number of months.

### *Qualifying Relationship*

Upon review, the petitioner has not established she had a qualifying relationship with a United States citizen when the petition was filed on December 4, 2009. As the AAO previously determined, based on the doctrine of comity between nations, a foreign divorce is considered valid if it is recognized as such under the laws of the jurisdiction granting the divorce. Counsel asserts that in this matter the Dominican laws in a "for cause" divorce require the service of a summons upon the respondent in the proceedings so that the respondent may appear personally or through a proxy. Counsel asserts that the USC spouse in this matter intentionally sent the summons to an

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<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> At the time the petitioner filed the Form I-360, her former spouse was a lawful permanent resident. On July 1, 2010, he naturalized to become a U.S. citizen.

address where he knew the petitioner did not reside and knew that her family did not reside. Counsel provides: pictures of a building alleged to be the location the USC spouse stated to the Dominican court the petitioner was served;<sup>3</sup> statements from the petitioner's family members providing their address and noting that they did not receive a notification of the petitioner's summons; and Forms G-325A, Biographical Information sheets listing the petitioner and the USC spouse's address on August 10, 2006 as in Massachusetts. As stated in our prior decision, all challenges to the validity of the order must be presented to the issuing court or other authority, and counsel, while citing reasons why she believes the divorce was invalid, submits no evidence to show that the divorce judgment has been invalidated, withdrawn or modified by a court of law with authority over the matter. In addition, while a Dominican lawyer noted that the Dominican divorce included a number of defects, the record does not include evidence that the petitioner has challenged the validity of the Dominican divorce. As the AAO previously stated, it lacks jurisdiction to go behind the order terminating the marriage.

Counsel again cites *Bergeron v. Bergeron*, 287 Mass. 524 (1934) to support her assertion that the divorce is not recognized under Massachusetts law; however, as stated in our prior decision the validity of the petitioner's divorce in Massachusetts is not an issue in this proceeding. Similarly, the decisions of the Social Security Agency (SSA) that counsel cites regarding the lack of recognition of certain divorce decrees by the State of Massachusetts are not relevant, as they are not precedent decisions that officers of U.S. Citizenship and Immigration Services must follow. 8 C.F.R. § 103.3(c). Accordingly, the petitioner's marriage to L-M- remains dissolved as of May 21, 2007, the date of the unchallenged divorce judgment rendered in the Dominican Republic.

As the record shows that the petitioner was no longer married to the claimed abusive spouse when the petition was filed and that she did not file the Form I-360 within two years of the dissolution of the marriage the petitioner has not established a qualifying relationship with her former USC spouse. The record on motion does not establish that the petitioner had a qualifying relationship with the claimed abusive USC when she filed the Form I-360.

### *Immigrant Classification*

As the petitioner has not established that she has a qualifying relationship with a United States citizen, she is also precluded from establishing that she is eligible for immediate relative classification based on her relationship with the former USC spouse, 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 her relationship to the claimed abusive spouse has not been established.

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<sup>3</sup> Counsel provides a print out of electronic correspondence indicating the building in the pictures is a judicial building in Santo Domingo.