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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



B9

DATE: **APR 24 2012** 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:** 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)(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 on the basis of his determination that the petitioner had failed to establish a qualifying relationship with a citizen of the United States and her eligibility for immigrant classification based upon that relationship. On appeal, counsel submits a brief.

*Applicable Law*

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).

An individual who is no longer married to a citizen 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 United States citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

Section 204(a)(1)(J) of the Act, 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) . . . 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].

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Barbados, was admitted to the United States on May 24, 1990 as a B-2 visitor. She wed J-G-, a U.S. citizen, on June 27, 1998 in Boston, Massachusetts.<sup>1</sup> They divorced on December 31, 2003.<sup>2</sup> The petitioner filed the instant Form I-360 on November 8, 2010. After considering the evidence of record, the director denied the petition on August 30, 2011.

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, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As noted, the petitioner's divorce from J-G- took legal effect on December 31, 2003, and she did not file the instant petition until November 8, 2010, almost seven years later. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act based on her relationship with J-G- because she was not his bona fide spouse within two years of the date she filed this petition. On appeal, counsel does not dispute that the petition was filed more than two years after the petitioner and J-G- divorced. Instead, counsel argues that the petitioner is not subject to the two-year filing deadline because she is the "intended spouse" of J-G-. She claims that the petitioner's marriage to J-G- was bigamous because he had a relationship with another woman, N-W-, while married to her. Counsel contends that J-G-'s bigamy is established by the submitted court records reflecting that N-W- filed paternity and child support actions and a request for a restraining order against J-G-.

Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, which pertains to situations involving the abuser's bigamy does not contain a filing deadline. *Black's Law Dictionary* (6th Ed., West 1990) defines bigamy as "[t]he criminal offense of willfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undissolved." Here, the record contains no evidence to establish that J-G- was already married while entering into a marriage with the petitioner. The petitioner submitted a request for a protection order filed by N-W- on July 10, 2000, which reflects that although N-W- was in an extramarital relationship with J-G- and they had a child together, they were never married.

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

<sup>2</sup> The record contains a copy of a certificate of absolute divorce issued by the Suffolk County, Massachusetts, [REDACTED] issued on July 6, 2010, and effective on December 31, 2003.

Counsel also argues on appeal that the two-year post-divorce filing deadline is a statute of limitations subject to equitable tolling which should only take effect after the petitioner discovered J-G-'s relationship with N-W-. However, she cites no binding authority in support of her argument. Although the petitioner cites *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D. Colo. 2011), that decision is not precedential, as the AAO is not bound to follow the published decision of United States district courts, even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

Although courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation, the petitioner cites no binding case finding visa petition filing deadlines subject to equitable tolling. *Compare Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9<sup>th</sup> Cir. 2005) (time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) with *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9<sup>th</sup> Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). The two-year, post-divorce filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive this statutory deadline.<sup>3</sup>

The petitioner has failed to file the petition within two years of the legal termination of her marriage to J-G-, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. The petitioner, therefore, has not demonstrated a qualifying relationship requisite for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her corresponding eligibility for immediate relative classification on the basis of such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

### *Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> Even if the deadline were found to be a statute of limitations, the petitioner would still have to show that she exercised due diligence in pursuit of her claim. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Albillo-DeLeon v. Gonzalez*, 410 F.3d at 1100.