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

[redacted]

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Date: DEC 19 2012 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Self-Petitioner: [redacted]

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident.

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) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

> (CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –
> (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or
> (bbb) who 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].

Facts and Procedural History

The petitioner is a citizen of Trinidad and Tobago who claims to have entered the United States on July 10, 1990. The petitioner married a lawful permanent resident on May 16, 1990, in Trinidad and Tobago. The petitioner's husband passed away on March 17, 2000. The petitioner filed the instant Form I-360 on June 8, 2010. The director denied the petition for failure to establish the requisite qualifying relationship with her husband and eligibility for immigrant classification based on such a relationship. The AAO summarily dismissed the petitioner's subsequent appeal as the petitioner did not specifically identify any erroneous conclusion of law or statement of fact in the director's decision.

On motion, the petitioner submitted a personal statement asking U.S. Citizenship and Immigration Services (USCIS) to grant her discretionary relief even though there is no legal basis for the petitioner to be "grandfathered" for a grant of her Form I-360. The petitioner also submitted additional evidence including letters of support and evidence of her husband's death. As new evidence was submitted, the petitioner's motion meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen is granted. However, the petitioner has failed to establish her eligibility for approval of her Form I-360 for the following reasons.

Analysis

The petitioner has failed to establish that she had a qualifying relationship with her husband at the time of filing the Form I-360 and that she was eligible for immigrant classification based on said relationship. The record shows that the petitioner's husband passed away on March 17, 2000. Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, a spouse of a U.S. citizen who files within two years of the alleged abuser's death remains eligible for consideration of a Form I-360 petition. However, there is no similar widow's provision under section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act. Here, the petitioner was not married to a U.S. citizen, as her husband was a lawful permanent resident at his death. The petitioner also does not meet either of the exceptions at section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act. She was not the spouse of a lawful permanent resident within the two years preceding the filing of her Form I-360; her husband did not lose his status due to an incident of domestic violence; and their marriage was not terminated due to his abuse, but rather upon death. As such, the petitioner has not established that she had a qualifying relationship with her husband, and she did not demonstrate her eligibility for preference immigrant classification based on such a relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. While the AAO acknowledges the petitioner's request for a discretionary grant, neither the Act nor the pertinent regulations grant the AAO authority to waive the statutory requirements of section 204(a)(1)(B)(ii) 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.

ORDER: The appeal remains dismissed and the petition remains denied.