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

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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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DATE: JUL 13 2012 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Petitioner: [redacted]

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:

[redacted]

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 its 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 motion 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 any motion to 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, ("the director") denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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 her United States citizen spouse.

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 . . . .

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

> 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 self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.* (Emphasis added)

Pertinent Facts and Procedural History

The petitioner is a native and citizen of the Philippines. She entered the United States on or about March 28, 1990 on a B-1/B-2 visa. On June 26, 2004, the petitioner married C-R-,[1] the claimed abusive United States Citizen (USC). On October 1, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On October 31, 2010, a Final Judgment of Divorce terminating the marriage between the petitioner and C-R- was filed in the Superior Court of California, County of Riverside. On November 16, 2010, the petitioner entered into a second marriage. Upon review of the record, the director determined that as the petitioner had remarried while the Form I-360 was pending, a qualifying relationship no longer existed between the petitioner and the USC spouse and consequently, the petitioner was no longer eligible for immigrant classification based on the qualifying relationship. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion. Counsel asserts that Public Law 106-386 section 1507(a)(3)(b) allows for the remarriage of battered immigrants and that any restriction on an individual's right to marry is unconstitutional. The record on appeal includes no further evidence or brief. The record is considered complete.

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

In this matter, the petitioner's second marriage occurred after she filed the Form I-360 petition but prior to an adjudication of the Form I-360 petition. Her remarriage while the Form I-360 petition was pending prompted the application of 8 C.F.R. § 204.2(c)(1)(ii). The language of the implementing regulation cited above, clearly states that a petitioner's remarriage will be the basis for the denial of the petition. Accordingly, we concur with 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 her divorce from C-R- and her remarriage while this petition was pending.

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[1] Name withheld to protect the individual's identity.

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

The petitioner has also failed to demonstrate her 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 C-R- divorced and the petitioner remarried another individual. Accordingly, she is ineligible for immediate relative classification under section 204(b)(2)(A)(i) of the Act based on her prior relationship with C-R-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The Implementing Regulation at 8 C.F.R. § 204.2(c)(1)(ii)is not Unconstitutional

The implementing regulation does not prohibit an individual from the free exercise of her right to marry. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to this matter. The petitioner has not met her 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 petition remains denied.