

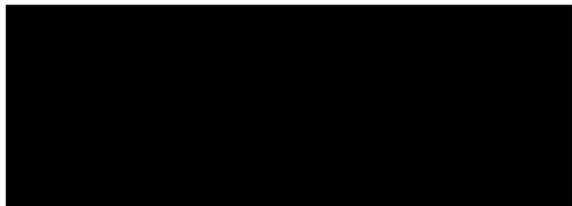
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

Date: **MAR 07 2012** Office: VERMONT SERVICE CENTER

FILE:

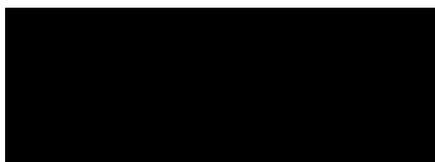


IN RE: Self-Petitioner:



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 APPLICANT:



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 Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“the director”) denied the immigrant visa petition and reaffirmed his decision upon granting a motion to reopen and reconsider. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The AAO now reopens the matter upon its own motion. The prior decision of the AAO will be withdrawn. The case will be remanded to the Vermont Service Center for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States. Aliens whose spouses are no longer U.S. lawful permanent residents are still eligible for classification under this provision if they demonstrate that their “spouse lost status within the past 2 years due to an incident of domestic violence.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa).

The director denied the petition because the petitioner’s husband lost his lawful permanent resident status more than two years before she filed her petition and she consequently did not have a qualifying relationship with a U.S. lawful permanent resident and was ineligible for preference immigrant status on the basis of such a relationship. In dismissing the petitioner’s appeal, the AAO determined that the two-year filing deadline at section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act was a statute of repose not subject to equitable tolling.

The petitioner subsequently filed a complaint in the United States District Court of Colorado (*Moreno-Gutierrez v. Napolitano, et al.*, 10-CV-00605, (D. Colo. 2010), seeking, in part, a declaratory judgment that the two-year filing deadline at section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitation subject to equitable tolling and that ineffective assistance of counsel may act to toll the statute.

On June 24, 2011, the court issued an order determining that the two-year deadline at section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act is a statute of limitation subject to equitable tolling. The court did not, however, determine whether the petitioner was entitled to equitable tolling based on the ineffective assistance of her prior counsel.

In light of the court’s order, the AAO hereby withdraws its prior decision and reopens the administrative proceedings on this petition pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i). Because the director did not consider whether the petitioner was entitled to equitable tolling of the two-year deadline, the matter will be remanded to the Vermont Service Center for reconsideration and issuance of a new decision in accordance with the court’s order.

ORDER: The May 26, 2009 decision of the Administrative Appeals Office is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration and issuance of a new decision.