

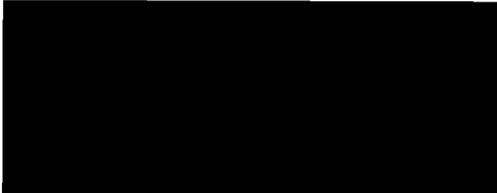
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: MAR 09 2012 Office: VERMONT SERVICE CENTER

FILE:



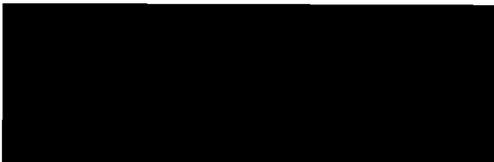
IN RE:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

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.

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).

The director denied the petition after determining that the petitioner failed to establish a qualifying relationship with a United States citizen spouse and had also failed to establish eligibility for immigrant classification based on a qualifying relationship. Specifically, the director found that the petitioner was not free to marry her U.S. citizen spouse because her prior marriage had not been dissolved. Counsel for the petitioner submitted a timely filed Form I-290B, Notice of Appeal or Motion, and provides a supplemental brief.

The evidence submitted on appeal and below demonstrates that the petitioner did not enter into a customary marriage and thus, the petitioner is not required to establish that it was dissolved prior to entering into marriage with her USC spouse. Accordingly, the petitioner has established that she is the spouse of a U.S. citizen as required under section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act and is eligible for classification as an immediate relative based on her qualifying relationship with her USC spouse, as required under section 204(a)(1)(A)(iii)(II)(cc) of the Act. The AAO will withdraw the director's decision to the contrary and sustain the appeal.

As in all visa petition proceedings, the petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The February 17, 2011 decision of the director is withdrawn. The appeal is sustained and the petition is approved.