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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 23 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: 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 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 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 dismissed. The petition will remain denied.

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

The director determined that the petitioner had not established that she had a qualifying relationship with a lawful permanent resident or that she is eligible for immigrant classification. On appeal, counsel for the petitioner submits a brief and additional documentation. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Applicable Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful 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 petitioner's spouse. In addition, the petitioner must show that he or she is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, 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)(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)(B)(ii) 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

Facts and Procedural History

The petitioner is a native and citizen of Ecuador. She entered the United States on or about January 17, 2002 as a B-2 nonimmigrant visitor. She married E-A-,¹ the claimed abusive United States lawful permanent resident on July 29, 2003. On November 24, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established a qualifying relationship with the claimed abusive spouse when the petition was filed. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides for the first time on appeal a copy of a Final Judgment and Decree of Divorce filed in the Office of the Clerk of the Superior Court, Gwinnett County, Georgia on July 8, 2009 terminating the marriage between the petitioner and E-A-. Counsel asserts that as section 240(a)(1) of the Act allows a former spouse to file a self-petition for up to two years following the termination of a qualifying marriage and the petitioner complied with this requirement, the petition must be approved.

Qualifying Relationship

The petitioner in this matter stated on the Form I-360 that she was divorced. The director, through the issuance of an RFE on December 23, 2010, specifically requested that the petitioner provide a copy of the document terminating her marriage to the claimed abuser. The director noted that if the divorce or annulment proceedings were still pending, the petitioner should submit evidence indicating the current status of the proceedings. The petitioner did not provide any documentary evidence regarding the status of her marriage to or her divorce from the claimed abuser. As the director could not determine the current status of the petitioner's relationship with the claimed abuser, the director determined that the petitioner had not established the requisite qualifying relationship and denied the petition.

For the first time on appeal, the petitioner submits a copy of a Final Judgment and Decree of Divorce filed in the Office of the Clerk of the Superior Court, Gwinnett County, Georgia on July 8, 2009 terminating the marriage between the petitioner and E-R-. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary for the adjudication of the petition. *See* 8 C.F.R. § 103.2(b)(8). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In this matter, whether a marriage has been terminated and if so, the date of the divorce or annulment, is material to establishing eligibility

¹ Name withheld to protect the individual's identity.

for this benefit. The language of the statute clearly provides that to remain eligible for classification despite no longer being married to a United States lawful permanent resident, an alien must have been the bona fide spouse of a United States lawful permanent resident “within the past two years” and demonstrate a connection between the abuse and the legal termination of the marriage. 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb). The record shows that the petitioner was no longer married to E-R- when the petition was filed. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the documents submitted considered, she should have submitted the documents in response to the director’s request for evidence. *Id.* Moreover, the record does not include evidence demonstrating a connection between the abuse and the legal termination of the marriage. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Immigrant Classification

As the petitioner has not established that she had a qualifying relationship with a United States lawful permanent resident, she is also precluded from establishing that she is eligible for immediate relative classification based on her relationship with E-R-, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

Conclusion

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition remains denied.