

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



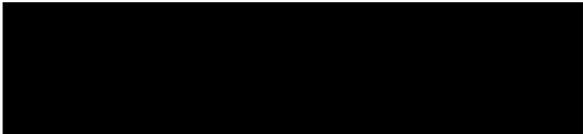
B9

Date: **MAR 28 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE:

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.

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 (“the director”), revoked approval of the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision upon granting a subsequent motion to reopen and reconsider. The matter is now again before the AAO on a second motion to reopen and reconsider. The motion will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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].

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are further explicated 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 file by a spouse must 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

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated September 27, 2010, only certain facts will be repeated as necessary here. In this case, the petitioner is a native and citizen of Bangladesh who was admitted into the United States on December 11, 2000, as a B-2 nonimmigrant visitor. On February 24, 2003, the petitioner married M-E-¹, a U.S. citizen. The director revoked the approval of the instant Form I-360 petition on May 1, 2009, because the record showed that the petitioner had a prior marriage, which he had not disclosed, and he failed to provide evidence that it was terminated at the time of his marriage to M-E-. The director determined that the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, that he is eligible for immigrant classification based upon that relationship, and that he is a person of good moral character. The director also determined that because the petitioner had not established that he was legally free to marry M-E-, he had not established the remaining requirements of section 204(a)(1) of the Act. In its June 1, 2010 decision on appeal, the AAO withdrew the director's finding that the petitioner lacks good moral character. The AAO, however, concurred with the director's determination that the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, and that he is eligible for immigrant classification based upon that relationship. The AAO also concurred with the director's determination that because the petitioner had not established that he was legally free to marry M-E-, he also had not established the remaining requirements of section 204(a)(1) of the Act. In its September 27, 2010 decision, the AAO affirmed its June 1, 2010 decision upon granting the petitioner's motion to reopen and reconsider.

On the present motion, counsel resubmits the brief he filed with his first motion that was previously addressed in the AAO's September 27, 2010 decision, incorporated here by reference. Counsel also submits additional evidence, including: an affidavit from the petitioner, dated October 22, 2010; marriage record searches from the provinces and territories of Canada; and copies of an envelope and money order issued to the U.S. Consulate in Halifax, Nova Scotia.

De novo review of the record does not establish that the petitioner had a qualifying relationship as the spouse of a United States citizen and that he is eligible for immigrant classification based upon that relationship. The relevant evidence submitted below and on appeal was discussed in the AAO's June 1, 2010 decision. The petitioner states in the affidavit submitted with the present motion that he resided in Sylhet, Bangladesh from his birth until July 2000 when he moved to Canada. He states that he remained in Canada from July 2000 until December 10, 2000. The petitioner submits evidence of marriage record searches from all of the provinces and territories of Canada during the time period of his residence in the country. The statements from the provinces provide that a search of records in those locations finds no record of a marriage for the petitioner. The petitioner resubmits a previously filed letter from [REDACTED] Sylhet, stating that that the petitioner is personally known to him and he can assure that the petitioner has never been married in Bangladesh.

¹ Name withheld to protect the individual's identity.

The submitted evidence, however, does not resolve the discrepancies in the record. As discussed in detail in the AAO's prior decisions and in the director's May 1, 2009 decision, the DOS Optional Form 156, Nonimmigrant Visa Application, signed by the petitioner on September 12, 2000, lists his marital status as married, lists his wife's name as [REDACTED] and lists her nationality as Bangladesh. The petitioner's signature on this application matches his passport signature and, as pointed out by the director in his decision, the petitioner's handwriting on the application matches the handwriting on his Form I-94, Departure record. In the petitioner's affidavit submitted with the appeal, dated April 14, 2009, he maintained that he has only had one marriage and does not know [REDACTED]. He stated that during his stay in Canada, an agent helped him with obtaining a visitor visa to the United States. The petitioner recalled that the agent completed the nonimmigrant visa application and mailed it to the U.S. Consulate in Nova Scotia. He asserted that he only signed the application and never had the opportunity to review it. The petitioner reiterated these claims in the June 29, 2010 affidavit he submitted with his first motion. However, the petitioner, in the affidavit he submits with the present motion, has now changed his account of the manner in which he applied for a nonimmigrant visa. The petitioner now asserts that the agent initially gave him a blank visa form to complete and provided him with the completed visa application of another individual for guidance. The petitioner claims that he mistakenly copied personal information from the other application, including [REDACTED] name. He states that he asked for another application form, which he completed without Nazma Begum's name and provided his marital status as single. The petitioner asserts that the agent did not submit his second corrected application, but the first incorrect form.

The petitioner now admits to completing his own nonimmigrant visa application, whereas in his previous two affidavits he stated that he only signed the nonimmigrant visa application form and never had the opportunity to review it. The differences between his two accounts are significant, and detract from the credibility of his claims. Accordingly, the petitioner has failed to demonstrate with credible, probative evidence that his marriage to M-E- was a valid marriage. Therefore, he is unable to establish that he had a qualifying relationship as the spouse of a United States citizen and that he is eligible for classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(I)(aa) and (cc) of the Act and is consequently unable to meet the remaining eligibility requirements at section 204(a)(1)(A)(iii)(I)(bb) and (II)(dd) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his 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 motion is granted. The decision of the AAO, dated September 27, 2010, is affirmed. The petition's approval remains revoked.