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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

Date: **DEC 12 2013** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

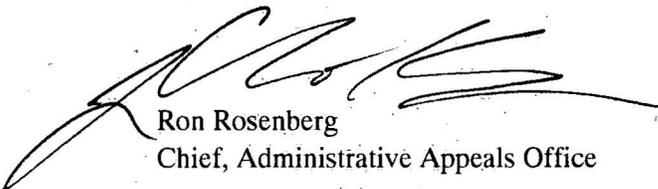
ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks immigrant classification pursuant to 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 her lawful permanent resident spouse. The director denied the petition because the petitioner failed to demonstrate a qualifying relationship with her former lawful permanent resident husband and establish corresponding eligibility for immigrant classification under section 203(a)(2)(A) of the Act, 8 U.S.C. § 1153(a)(2)(A). On appeal, counsel submits a supporting brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent 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 the spouse of a lawful permanent resident 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). An alien who has divorced an abusive lawful permanent resident spouse 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 lawful permanent resident spouse." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . clause (ii) or (iii) of subparagraph (B), 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].

Pertinent Facts and Procedural History

The petitioner is a citizen of Liberia who entered the United States on June 13, 1991 as a nonimmigrant visitor. The petitioner married E-P-¹, a lawful permanent resident, on June 24, 2000 in Detroit, Michigan. The marriage ended in divorce and was terminated on January 15, 2008. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on April 6, 2012. On April 25, 2013, the director denied the petition. The petitioner filed a timely appeal.

¹ Name withheld to protect individual's identity.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Eligibility for Immigrant Classification

We find no error in the director's determination that the petitioner failed to establish a qualifying relationship with her former husband pursuant to section 204(a)(1)(B)(ii)(II)(aa) of the Act, and thus, also failed to show corresponding eligibility for immigrant classification under section 203(a)(2)(A) of the Act. Here, the petitioner is divorced and may only establish the requisite qualifying relationship as the former spouse of a lawful permanent resident if a Form I-360 self-petition is filed within two years of the divorce. Section 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 petitioner's statement and a divorce judgment in the record show that her marriage terminated on January 15, 2008. The petitioner filed the instant Form I-360 over four years later on April 6, 2012. The petitioner therefore has not established that the instant petition was filed within two years of the termination of her marriage as required. Consequently, she has not established a qualifying relationship and her corresponding eligibility for preference immigrant classification based on such a relationship.

On appeal, counsel claims that the petitioner is also eligible for "VAWA relief" because her children "suffered cruelty and abuse also." While a self-petitioning spouse may establish the requisite battery or extreme cruelty, which subsection 204(a)(1)(B)(ii)(I)(bb) of the Act requires through abuse to his or her child(ren), the self-petitioner must still also demonstrate that she has or had a qualifying spousal relationship with the abuser under subsection 204(a)(1)(B)(ii)(II)(aa) of the Act. As noted, the petitioner was divorced more than two years prior to the filing of the instant petition. She therefore has not established a qualifying relationship as the former spouse of a lawful permanent resident, and has not demonstrated a corresponding eligibility for immigrant classification based on such a relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and (cc) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that she has a qualifying relationship with her former husband, a U.S. lawful permanent resident. She is consequently ineligible for immigrant classification as required under section 204(a)(1)(B)(ii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.