



U.S. Citizenship
and Immigration
Services

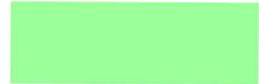
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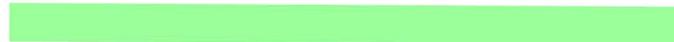
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Office: VERMONT SERVICE CENTER File:



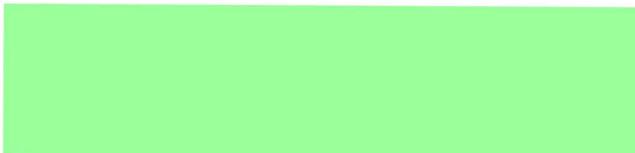
IN RE:

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 (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”) revoked approval of the immigrant visa petition after properly notifying the petitioner 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)(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 her United States citizen spouse.

The director revoked approval of the petition on the basis of his determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a U.S. citizen and was eligible for immigrant classification based upon that relationship because she remarried while the Form I-360 was still pending. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

Section 204(a)(1)(A)(iii)(I) 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 further 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)(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:

(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 It must also be accompanied by evidence of the relationship. . . .

Regarding a qualifying spousal relationship for a self-petitioner, the regulation at 8 C.F.R. § 204.2(c)(1)(ii) further states, in pertinent part, “The self-petitioner’s remarriage . . . will be a basis for the denial of a pending self-petition.”

Pertinent Facts and Procedural History

The petitioner, a citizen of Pakistan, married A-P¹, a United States citizen, on February 14, 2008 and the two were divorced on December 22, 2008. The petitioner subsequently married R-V² on August 20, 2009 in [REDACTED] Georgia. This marriage was later annulled on February 20, 2013 pursuant to Georgia state law. The petitioner filed the instant Form I-360 on November 25, 2008 and it was approved on July 27, 2010. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on January 30, 2012, and notified the petitioner that evidence contained in the record as well as statements made by the petitioner during her adjustment of status interview indicated that the petitioner had remarried prior to the approval of her Form I-360. The director stated that due to her remarriage, the petitioner therefore had failed to demonstrate the existence of a qualifying relationship to a U.S. citizen and her corresponding eligibility for immediate relative classification on the basis of such a relationship at the time of its approval. The petitioner, through counsel, submitted a timely response which the director found insufficient to overcome his proposed grounds for revocation. The director revoked approval of the petition on September 27, 2012.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director’s grounds for revocation. The appeal will be dismissed and approval of the petition will remain revoked for the following reasons.

Request for Oral Argument

The petitioner requests an oral argument. An appeal to the AAO may be accompanied by a written request for oral argument as per the regulation at 8 C.F.R. § 103.3(b) if the petitioner can explain why

¹ Name withheld to protect the individual’s identity.

² Name withheld to protect the individual’s identity.

an oral argument is necessary. On appeal, the petitioner, through counsel, asserts that the director failed to consider the “humanitarian exception” at 8 C.F.R. § 205.1(a)(3)(i)(C)(2) in revoking the petitioner’s Form I-360.³ He asserts that the revocation of the petitioner’s approved Form I-360 is a matter of “national importance” and that the “legal standards and procedures for USCIS adjudicators on both the issue of the humanitarian exception to remarriage, as well as a legal annulment, should be spelled out in regulation or at minimum in detailed policy guidance, where not addressed in statute.” However, the regulation at 8 C.F.R. § 205.1(a)(3)(i)(C)(2) cited by counsel does not pertain to Form I-360 self-petitions, but rather to Form I-130 Petitions for Alien Relative where the petitioner is deceased. The regulation states that in the event of the death of a petitioner, USCIS can exercise its discretion and not automatically revoke the visa petition for humanitarian reasons. There is no like provision for self-petitioners who, as in the instant case, remarry prior to the adjudication of the Form I-360 and subsequently are unable to establish that they have a qualifying relationship with an abusive U.S. citizen. Accordingly, the request for an oral argument is denied.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director correctly determined that the record below failed to demonstrate that the petitioner had a qualifying relationship with a United States citizen and was eligible for immediate relative classification. The regulation at 8 C.F.R. § 204.2(c)(1)(ii) specifically states that remarriage prior to adjudication of a self-petition is a basis for denial. The relevant evidence in the record below contains a copy of the petitioner’s marriage certificate to A-P-, a copy of the petitioner’s final order of divorce from A-P-, and a copy of the petitioner’s marriage certificate to R-V-. The record shows that prior to the approval of the petitioner’s Form I-360, the petitioner had remarried to R-V-. In response to the NOIR, the petitioner submitted a psychological evaluation from Dr. [REDACTED] Ph.D., a self-affidavit, a copy of her daughter’s birth certificate, and a copy of a page of her daughter’s U.S. passport. In her affidavit, the petitioner stated that she is a “broken woman who is attempting to be a good mother to [her] child and a good wife to [her] current husband.” She stated that her physical and mental health has worsened since her Form I-360 was approved and requested that the director not revoke the approval for humanitarian grounds. In her psychological evaluation, Dr. [REDACTED] described the petitioner as suicidal and appears “to not be psychologically present in her current marriage.” Dr. [REDACTED] concluded that the petitioner suffers from Post Traumatic Stress Disorder and Major Depression. Counsel also submitted a brief arguing that the director should not revoke the approval for humanitarian reasons and may not revoke approval because the sole basis for the revocation was her remarriage. The director correctly determined that counsel’s arguments and the evidence below were insufficient to overcome the grounds for revocation.

On appeal, the petitioner submits her complaint for annulment and the Final Judgment and Decree of Annulment demonstrating that her marriage to R-V- was annulled. Counsel reasserts that the petitioner’s Form I-360 should not be revoked because the petitioner continues to suffer as a result of her abusive former spouse and the director failed to consider the humanitarian exception within 8 C.F.R. § 205.1(a)(3)(i)(C)(2). There is no exception to the remarriage disqualification at 8 C.F.R.

³ In his briefs below and appeal, counsel incorrectly cites to the humanitarian exception at 8 C.F.R. § 205.1(a)(3)(2).

§ 204.2(c)(1)(ii) and the director correctly determined that the petitioner failed to establish that she had a qualifying relationship with a U.S. citizen.

On appeal, counsel also asserts that the petitioner's second marriage has been annulled and that since she was not legally remarried prior to the adjudication of her self-petition, there is no basis for the revocation. The petitioner's annulment does not negate the application of 8 C.F.R. 204.2(c)(1)(ii). In subsequent amendments to the original Violence Against Women Act (VAWA) statutory provisions at section 204 of the Act, Congress has left alone United States Citizenship and Immigration Services' (USCIS) interpretation that remarriage prior to petition approval requires denial.⁴ The legislative history supports USCIS interpretation that remarriage at any point prior to filing or while the Form I-360 is pending negates the need for VAWA protection. *See Delmas v. Gonzalez*, 422 F.Supp. 2d 1299 (S.D. Fla. 2005) (alien's remarriage prior to filing self-petition was disqualifying). Counsel incorrectly argues that the petitioner's annulment rendered her remarriage void *ab initio* and no longer impedes the approval of her Form I-360. In the context of adjudicating applications for immigration benefits, the "relation-back doctrine" which treats the marriage as if it had never existed, does not have to be applied in every case where a marriage has been annulled. *See Garcia v. INS*, 31 F. 3d 441, 441 (7th Cir. 1994); *Matter of Magana*, 17 I.&N. Dec. 111, 111 (BIA 1979); *Delmas v. Gonzalez*, 422 F. Supp 2d at 1299. Retroactive effect should not be given to an annulment where the application of the relation-back doctrine would go against "the purpose and intent of immigration law." *Garcia v. INS* at 441. In the instant case, to apply the relation-back doctrine would go against the intent of Congress in declining to extend eligibility to self-petitioners who divorce their abusers and remarry prior to the approval of their Form I-360 petitions.

While we do not discount the abuse the petitioner endured during her first marriage, her remarriage to a non-abusive spouse while this petition was pending demonstrates that she no longer qualifies for VAWA protection. Accordingly, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act due to her divorce from A-P- and her remarriage to R-V- while this petition was pending.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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 and the approval of the petition will remain revoked for the reasons stated above.

ORDER: The appeal is dismissed.

⁴ *See Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)*, Pub. L. 106-386, 9(Oct. 28, 2000); *Violence Against Women and Department of Justice Reauthorization Act of 2005*, Pub. L. No. 109-162, (VAWA 2005); *Violence Against Women Reauthorization Act of 2013*, Pub. L. No. 113-4 (VAWA 2013).