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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 01 2014**

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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 Vermont Service Center director (“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 under 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.

The director denied the petition for the petitioner’s failure to establish that he had a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based on such a relationship. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

*Relevant Law and Regulations*

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).

An alien who has divorced an abusive United States citizen may still self-petition as an abused spouse 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).

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

... 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 citizen of Ghana who applied for admission to the United States on June 2, 1993 as a P-3 temporary worker. The petitioner was determined to be inadmissible and was referred to an Immigration Judge who, on December 2, 1993, ordered him excluded *in absentia*. On July 28, 1994, the petitioner filed a Request for Asylum (Form I-589) which was administratively closed by the Newark Asylum Office for lack of jurisdiction, as the petitioner was subject to an order of exclusion. On July [REDACTED] the petitioner married J-C-<sup>1</sup>, a Ghanaian citizen and then-lawful permanent resident of the United States, in Ghana. The petitioner subsequently entered the United States on an unknown date under unspecified circumstances. On October 23, 2002, J-C- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf, which was approved on August 19, 2004. J-C- became a naturalized U.S. citizen on August 13, 2003 and she and the petitioner were divorced in Ghana on June [REDACTED]. The petitioner filed the instant Form I-360 self-petition on April 9, 2013. The director denied the petition because the petitioner did not file it within two years after his divorce, and thus is unable to establish that he had a qualifying relationship with a U.S. citizen spouse and the corresponding eligibility for immediate relative classification. The petitioner appealed.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act allows a former spouse to file a self-petition for up to two years following the termination of a qualifying marriage as long as certain circumstances are present, as specified at subsections (aaa), (bbb) and (ccc). The director correctly determined that the petitioner had not established a qualifying relationship with J-C- because his marriage to her was terminated on June [REDACTED] and the Form I-360 was not filed until April 9, 2013, more than seven years later.

On appeal, counsel briefly asserts that the two-year, post-divorce filing deadline is a statute of limitations subject to equitable tolling. Counsel cites no binding legal authority for his claim. Although counsel references *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D. Colo. 2011), that decision is not precedential as we are not bound to follow the published decisions of any United States district court, even in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act allows a former spouse to file a self-petition for up to two years after divorcing and there is no exception to this rule. Although courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation, the petitioner cites no case finding visa petition filing deadlines subject to

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<sup>1</sup> Name withheld to protect the individual's identity.

equitable tolling. Compare *Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9<sup>th</sup> Cir. 2005) (time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) with *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9<sup>th</sup> Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). The two-year, post-divorce filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive this statutory deadline. Similarly, we lack the authority to waive the application of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act to the instant self-petition based on the claim, as advanced by counsel on appeal, that because the petitioner did not learn of the abuse to which J-C- allegedly subjected the couple's daughter until several years after the divorce, he could not file his self-petition within the two years of his divorce.

Counsel's asserts on appeal that the petitioner's Ghanaian divorce by proxy is invalid, citing *Matter of Luna*, 18 I &N Dec. 385, 386 (BIA 1983). Counsel has submitted no evidence demonstrating that domicile in Ghana is required of either party to a divorce. When relying on a foreign law, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)).

Counsel posits that California has generally refused to recognize Mexican divorces where neither party was physically present in the foreign court, and states that as the petitioner's divorce was by proxy, it is invalid. The validity of the petitioner's divorce in California is not at issue in these proceedings. For immigration purposes, based on the doctrine of comity between nations, a foreign divorce is considered valid if it is recognized as such under the laws of the jurisdiction granting the divorce. See *Matter of A*, 6 I &N Dec. 272 (BIA 1954); *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982).

In *Matter of Kodwo*, the Board of Immigration Appeals (BIA) modified its earlier decision in *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985), determining that affidavits executed by the heads of household (e.g., the fathers of the husband and wife), may be sufficient under Ghanaian law to establish the dissolution of a customary tribal marriage. In the present matter, the record contains the petitioner's court-ordered and court-registered divorce decree issued on June [REDACTED] by the Registrar of the Circuit Court of Accra, Ghana. The petitioner, who has the burden of proof in these proceedings, has presented no evidence that Ghanaian law requires the domicile or physical presence of both parties in divorce proceedings generally or that the petitioner's own divorce is invalid.

We acknowledge the petitioner's claims; however, we have no jurisdiction to go behind the order terminating the marriage. All challenges to the validity of the order must be presented to the issuing court or other authority. The petitioner has failed to provide any evidence to show that his divorce decree has been invalidated, withdrawn or modified by a court of law with authority over the matter; or that the divorce decree is otherwise considered invalid under the laws of Ghana.

As the petitioner did not file the I-360 self-petition within two years of the legal termination of his marriage to J-C-, he has not established that he had a qualifying relationship as the spouse of a U.S.

citizen and is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

*Conclusion*

On appeal, the petitioner has failed to establish a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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 petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.