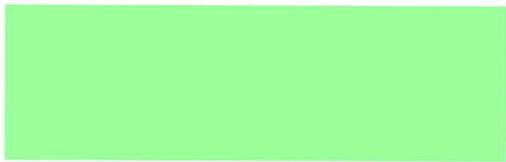


(b)(6)

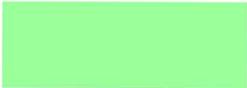
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090

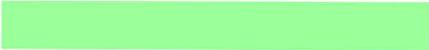


U.S. Citizenship
and Immigration
Services



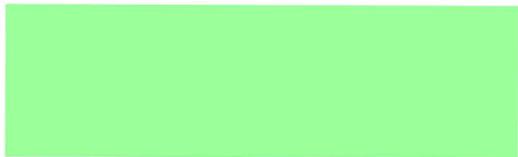
Date: **SEP 18 2014**

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,

A handwritten signature in black ink that appears to read "Ron Rosenberg".

f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“the director”), denied the immigrant visa petition. 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 concluding that the petitioner had failed to establish a qualifying relationship with his former spouse, and his corresponding eligibility for immediate relative classification. The director also found that the petitioner failed to establish residence with his former spouse.

Applicable 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 individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she is an alien: “who was a bona fide spouse of a United States citizen within the past 2 years and . . . who 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) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

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

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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 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

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

Pertinent Facts and Procedural History

The petitioner is a citizen of Trinidad and Tobago who entered the United States on January 7, 2003 as a B-2 nonimmigrant visitor. The petitioner married S-S-¹, a United States citizen, on March 17, 2008. The petitioner submitted a document from the Matrimonial/IAS Part of the New York State Supreme Court, indicating that a judgment of divorce was entered between S-S- and the petitioner on July 20, 2011. The petitioner filed the Form I-360 on August 12, 2013.

The director denied the petition based upon a determination that the petitioner had not established a qualifying spousal relationship and corresponding eligibility for immediate relative classification because his marriage was terminated on July [REDACTED], more than two years prior to the filing of the Form I-360. The director determined that under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act

¹ Name withheld to protect the individual's identity.

a former spouse may file a self-petition for up to two years following the termination of a qualifying marriage and that there was no exception to the two-year limitation. The director further determined that the petitioner failed to establish his residence with S-S-.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On appeal, counsel first argues that the petitioner's Judgment for Divorce was entered on August [REDACTED] when the clerk filed the order, rather than July [REDACTED], when the official referee signed the order. Counsel states that the petitioner and S-S- decided to "stay married" and that they informed the court of their wish "to discontinue their divorce action" by filing a "Stipulation of Discontinuance" with the court prior to the clerk's filing of the order. Counsel then argues that because the divorce was not final "until all motions were decided and a final entry of judgment was entered" on October 21, 2011, the petitioner fell within the two-year filing requirement under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. The record does not support counsel's claims.

A divorce must be valid under the laws of the jurisdiction granting the divorce. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). Contrary to counsel's arguments, where a New York judge grants a judgment of divorce and there are no outstanding issues to be resolved, the entry of judgment by the clerk is a mere ministerial act. See *Flythe v. Astrue*, 10 CIV. 9069 (NM), 2012 WL 38927 at *1, *2 (S.D.N.Y. 2012); See also *Application of Avery*, 445 N.Y.S.2d 672, 676 (N.Y. Sur. 1981)(marriage between the petitioner and decedent was not void because the marriage occurred prior to the entry of the judgment of divorce because entry of the decree of divorce was a ministerial act). Accordingly, the petitioner's divorce was final on July [REDACTED] the date the judgment for divorce was signed.

Counsel also fails to provide support for his claim that the petitioner's divorce was not final until the motion to vacate was heard on October [REDACTED]. The petitioner submits two printouts identifying the New York Civil Supreme Court and the index number of the petitioner's divorce proceeding showing that an uncontested judgment for divorce was granted on July [REDACTED]. The printout further shows that a subsequent motion to vacate, filed on August 19, 2011,² was disposed of by short form order on October [REDACTED]. The printouts regarding the October [REDACTED] hearing do not provide any detailed information about the proceedings, do not indicate that the motion was granted, or otherwise establish that the initial divorce judgment was vacated and a new date of judgment entered. In addition, the New York Supreme Court has stated that there is no basis in law for a motion to vacate an uncontested, final judgment of divorce solely on grounds of reconciliation, and the only remedy for parties who have reconciled after a divorce decree is entered is to remarry. *Doe v. Doe*, 905 N.Y.S.2d 901, 902-906. (N.Y. Sup. Ct. 2010). In the proceeding

² Even we had determined that the petitioner's divorce did not become final until filing by the clerk on August [REDACTED] which we did not, the petitioner's documents show that the motion to vacate was filed after this date.

before us, the petitioner's wife filed for divorce and the court issued an uncontested, final judgment of divorce two years prior to the filing of the self-petition. Consequently, the petitioner failed to establish a qualifying spousal relationship with his former spouse, and his corresponding eligibility for immediate relative classification.

Joint Residence

On the Form I-360 the petitioner indicated that he and S-S- resided together from June 2007 until April 2009. He further indicated that they last resided together at [REDACTED]. However, the petitioner provided no probative detailed information describing his shared residence with S-S-. The petitioner's sister, [REDACTED] and brother-in-law, [REDACTED] stated that the petitioner and S-S- lived with the [REDACTED]. Again, however, the statements provide no specific dates of residence and other detailed and probative information to demonstrate that S-S- resided with the petitioner during their marriage.

Accordingly, the petitioner has not demonstrated that he resided with his former spouse during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.