



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: Office: VERMONT SERVICE CENTER

FILE:

SEP 26 2014

IN RE: Self-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”) 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)(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 U.S. citizen spouse.

The director denied the petition on the basis of her determination that the petitioner had failed to establish a qualifying spousal relationship with a citizen of the United States and her corresponding eligibility for immigrant classification based upon that relationship. On appeal, counsel submits a brief.

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 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).

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].

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who claims that she entered the United States without inspection on September 28, 1995. The petitioner married S-M-¹ a U.S. citizen, on February [REDACTED]. Their marriage terminated in a divorce on December [REDACTED]. The petitioner filed the instant Form I-360 on January 20, 2012. The director denied the petition and the petitioner timely appealed.

¹ Name withheld to protect individual’s identity.

We conduct appellate review on *a de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims do not overcome the director's determination. The appeal will be dismissed for the following reason.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner's divorce from S-M- took legal effect on December [REDACTED] and she did not file the instant petition until January [REDACTED] over four years later. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act based on her relationship with S-M- because she was not his bona fide spouse within two years of the date she filed this petition. On appeal, counsel does not dispute that the petition was filed more than two years after the petitioner and S-M- divorced. Instead, counsel asserts that the two-year post-divorce filing deadline is a statute of limitations subject to equitable tolling and cites to a 2011 decision of the U.S. District Court of Colorado. However, that decision is not precedential, as the AAO is not bound to follow the published decision of United States district courts, even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

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 binding case finding visa petition filing deadlines subject to equitable tolling. Compare *Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th 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 (9th 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)(ccc) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive this statutory deadline.²

The petitioner failed to file the petition within two years of the legal termination of her marriage to S-M-. The petitioner, therefore, has not demonstrated a qualifying spousal relationship for immigrant classification under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and her corresponding eligibility for immediate relative classification on the basis of such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and explicated in the regulation at 8 C.F.R. 204.2(c)(1)(i)(B).

² Even if the deadline were found to be a statute of limitations, the petitioner would still have to show that she exercised due diligence in pursuit of her claim. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). The petitioner in her initial affidavit described her efforts since her divorce to resolve her own and her son's immigration status. However, since the two-year filing deadline is not subject to equitable tolling, we do not reach this issue on appeal.

Conclusion

On appeal, the petitioner has not established a qualifying spousal relationship with a U.S. citizen and her eligibility for immediate relative classification on the basis of such a relationship because the petition was filed more than two years after her divorce. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.