



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 09 2015**

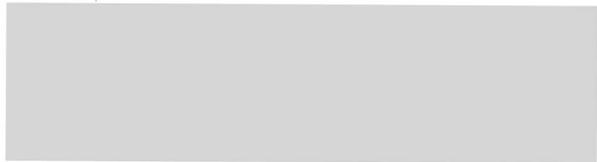
Office: VERMONT SERVICE CENTER

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,


f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) 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 former U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner had a qualifying relationship with her former spouse, and her corresponding eligibility for immediate relative classification. The director noted further that the petitioner did not submit sufficient evidence to establish she resided with her former spouse, was battered or subjected to extreme cruelty perpetrated by her former spouse, and that she entered into the marriage with her former spouse in good faith. These remaining issues were not addressed in detail, however, because the petition was otherwise deniable. On appeal, the petitioner 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 a United States citizen may still self-petition under section 204(a)(1)(A)(iii) 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; 8 U.S.C. § 1154(a)(1)(J), 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].

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.

Facts and Procedural History

The petitioner is a native and citizen of Bulgaria who was admitted into the United States on July 18, 1998 as an F-1 nonimmigrant. The petitioner married P-G¹, a U.S. citizen, in [redacted] Illinois on [redacted] 2000. Their marriage was dissolved on [redacted] 2008. The petitioner filed this Form I-360 on April 25, 2014. The director denied the petition on July 18, 2014, finding that the petitioner did not establish that she had a qualifying relationship with her former spouse and corresponding eligibility for immediate relative classification, due to the dissolution of their marriage more than two years before the petition was filed. The director noted further that the petitioner did not submit sufficient evidence to establish the she resided with her former spouse, was battered or subjected to extreme cruelty perpetrated by her former spouse, and that she entered into the marriage with her former spouse in good faith.

We review these proceedings *de novo*. Upon review, the petitioner has failed to overcome the grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Eligibility for Immediate Relative Classification

On appeal the petitioner does not contest that she was divorced from her citizen spouse for more than two years when she filed the present Form I-360 petition in April 2014. She asserts, instead, that she timely filed a previous Form I-360 that was approved by U.S. Citizenship and Immigration Services (USCIS) in 2006. The petitioner argues that USCIS erroneously revoked her previous petition and that the evidence established, by a preponderance of the evidence, that she satisfied the conditions contained in section 204(a)(1)(A)(iii)(I) of the Act and was eligible for classification as an immediate relative. She concludes, on this basis, that the filing date contained on her first Form I-360 petition should therefore be applied to her current Form I-360.

¹ Name withheld to protect individual's identity.

A review of the record reflects that the petitioner filed a previous Form I-360 on July 27, 2006, which was approved on August 8, 2006. On July 8, 2010, USCIS issued a Notice of Intent to Revoke (NOIR) the approval of the Form I-360, to which the petitioner responded with additional evidence. The petition was subsequently revoked on November 18, 2010, on the basis that the petitioner failed to establish that she resided with her former husband, entered into the marriage in good faith, and was subjected to battery or extreme cruelty by her former husband during the marriage. The revocation decision provided the petitioner with information about appeal rights and the opportunity to file a motion to reopen or reconsider within 18 days from the date of the revocation decision.

The petitioner asks us to now review the November 2010 revocation decision via her appeal of a second Form I-360 denial, asserting that the director's decision in that proceeding was erroneous and that she should be afforded the filing date of her prior self-petition. The regulation at 8 C.F.R. § 205.2(d) provides a petitioner with a period of 15 days [18 if decision is mailed] within which to submit an appeal from a notice of revocation of approval of a petition.² The regulation is binding on U.S. Citizenship and Immigration Service employees in their administration of the Act, and neither the Act nor the regulation grants us authority to extend this time limit. The petitioner did not appeal or file a motion to reopen or reconsider the revocation of her first Form I-360, and we may not treat the appeal of her subsequent Form I-360 denial over three years later, as an appeal of the 2010 revocation decision.

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act allows a former spouse to file a self-petition within two years of legal termination of the marriage. The language of the statute clearly reflects that to remain eligible for immigrant classification despite no longer being married to a U.S. citizen, an alien must have been the bona fide spouse of a United States citizen "within the past two years." *Id.* There is no exception to this rule. In the present matter, it is uncontested that the petitioner's divorce was final on [REDACTED] 2008, more than two years before she filed the present Form I-360 petition on April 25, 2014. The petitioner therefore did not establish a qualifying relationship with her U.S. citizen spouse and her eligibility for immediate relative classification based on that relationship. Accordingly, she is not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.³

Conclusion

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.

² In addition, an appeal which is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B).

³ The director also noted in the denial decision that the petitioner did not submit sufficient evidence to establish she resided with her former spouse, was battered or subjected to extreme cruelty perpetrated by her former spouse, and that she entered into the marriage with her former spouse in good faith. The issues were not analyzed because the director found the petition to be otherwise deniable. We also will not address this aspect of the petitioner's claim as she failed to establish the requisite spousal relationship.

(b)(6)



NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed.