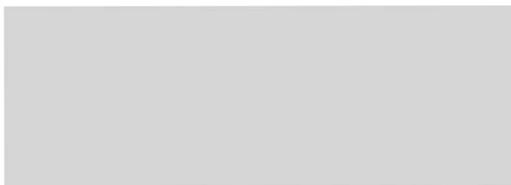




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 03 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: 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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director, (the director) denied the 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 for failure to establish a qualifying relationship with her U.S. citizen former spouse and corresponding eligibility for immediate relative classification based on that relationship. On appeal, the petitioner 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 was the bona fide spouse of an abusive United States citizen who died within the past two years may still file a self-petition under this provision of the Act. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(aaa). 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), 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. . . .

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Jamaica, claims she entered the United States on November 1, 1995. The petitioner married G-B-¹, a U.S. citizen, on [REDACTED] 2006, in [REDACTED] Arizona. The petitioner and G-B- were divorced on [REDACTED] 2009. The petitioner filed the instant Form I-360 self-petition on August 11, 2014. The director found the record insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. The petitioner's claims and the new evidence submitted on appeal fail to overcome the grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen spouse and was eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.² The instant self-petition was filed more than five years after the petitioner and G-B- were divorced. The petitioner consequently had no qualifying relationship with G-B- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and is ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The petitioner asserts on appeal that the two-year post-divorce filing deadline is a statute of limitations subject to equitable tolling. However, she cites no binding authority in support of her argument. Although the petitioner cites *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D. Colo. 2011), that decision is not precedential, as the AAO is not bound to follow the published decision of United

¹ Name withheld to protect the individual's identity.

² The director also determined, without discussion, that the petitioner did not establish that she entered into marriage with her former husband in good faith. As the petitioner is otherwise not eligible for the benefit sought, this issue will not be addressed on appeal.

States district courts, even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). While 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 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). We acknowledge that the petitioner may not have been advised by her previous counsel that she could file a Form I-360 self-petition. However, notwithstanding the petitioner's reliance on her previous attorney, the two-year, post-termination 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.

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AA● 2010). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.