



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE:

**JUN 05 2015**

FILE #:

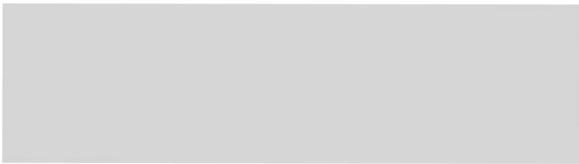
PETITION RECEIPT #:

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:



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](http://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 Director, Vermont Service Center (the director), revoked approval of 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 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 his U.S. citizen spouse. The director revoked approval of the petition based on the petitioner's remarriage.

*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).

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:

(ii) *Legal Status of the marriage.* . . . The self-petitioner's remarriage . . . will be a basis for the denial of a self-petition.

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 Kenya, last entered the United States on June 13, 2008 as a nonimmigrant visitor. He married S-W-<sup>1</sup>, a U.S. citizen, on [REDACTED], 2008 in [REDACTED] California. The marriage ended in divorce on [REDACTED] 2011. The petitioner filed the instant Form I-360 self-petition on July 24, 2012. He then married T-J-, a U.S. citizen, on [REDACTED] 2012. T-J- subsequently filed an immediate relative petition on behalf of the petitioner, and on April 9, 2013, the petitioner requested to withdraw his Form I-360 self-petition; however, the director did not process the withdrawal prior to approving the Form I-360 self-petition on April 28, 2013. On June 13, 2013, T-J- withdrew her immediate relative petition filed on the petitioner's behalf. On August 11, 2014, the director sent the petitioner a Notice of Intent to Revoke (NOIR) his Form I-360 self-petition based on his remarriage. The petitioner responded with additional evidence, which the director found insufficient to establish eligibility. The director revoked approval of the petition, and the petitioner timely appealed.

*Analysis*

On appeal, the petitioner asserts that he was never legally married to T-J-, because unbeknownst to him, T-J-'s prior marriage in the state of Nevada was never legally terminated. The petitioner argues that as a matter of California law, his marriage to T-J- was void from inception. The petitioner submitted documentation showing that he filed for an annulment of his marriage to T-J- on [REDACTED] 2014 in the Superior Court of California.

We need not reach the issue of whether the petitioner's remarriage rendered him ineligible for an immigrant visa under section 204(a)(1)(A)(iii) of the Act. The petitioner submitted a request to withdraw his Form I-360 self-petition prior to its approval. The request is dated March 28, 2013, and was received by the Vermont Service Center on April 9, 2013. The regulation at 8 C.F.R. § 103.2(b)(6) states:

*Withdrawal.* [A petitioner] may withdraw [a] benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

As the petitioner withdrew his Form I-360 self-petition prior to a decision from USCIS, the petition should have been denied based on the petitioner's withdrawal. The director's approval of the petition was, therefore, in error. Even if the petitioner had withdrawn the Form I-360 self-petition after its approval, the approval would nevertheless have been revoked because the petitioner has not yet adjusted his status to that of a lawful permanent resident. See 8 C.F.R. § 103.2(b)(6) (noting that in the case of an approved petition, a benefit request may be withdrawn until the person is granted adjustment of status based on the petition). Approval of the petition will therefore remain revoked.

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

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*NON-PRECEDENT DECISION*

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*Conclusion*

A withdrawal of a benefit request may not be retracted. 8 C.F.R. § 103.2(b)(6). The petitioner has withdrawn his Form I-360 self-petition. Approval of the petition must remain revoked.

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). Here, that burden has not been met. The appeal will be dismissed and the petition will remain revoked for the above-stated reasons.

**ORDER:** The appeal is dismissed.