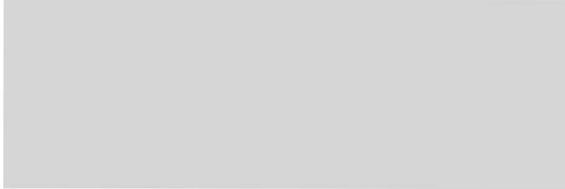




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 11 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [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)

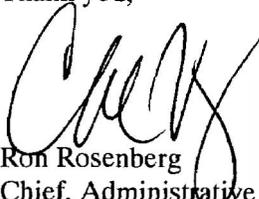
ON BEHALF OF PETITIONER:



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,


for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 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 the petitioner’s failure to establish that she had a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based on such a relationship. The director further noted that the petition lacked sufficient evidence to establish the requisite good moral character and battery or extreme cruelty. 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 an abusive United States citizen may still self-petition as an abused spouse 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 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.

(ii) Relationship. A self-petition filed by a spouse must 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

Facts and Procedural History

The petitioner is a citizen of Romania who entered the United States on December 21, 2005 as the nonimmigrant fiancée of V-U-¹, a U.S. citizen. On [REDACTED] 2005, she married V-U- in [REDACTED] Illinois. The petitioner and V-U- divorced on [REDACTED] 2007. The petitioner filed the instant Form I-360 self-petition on August 29, 2011. The director subsequently issued a Request for Evidence (RFE) and the petitioner timely responded. The director denied the self-petition because the petitioner did not file it within two years after her divorce, and thus is unable to establish that she had a qualifying relationship with a U.S. citizen spouse and the corresponding eligibility for immediate relative classification. The petitioner appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act allows a former spouse to file a self-petition for up to two years following the termination of a qualifying marriage as long as certain circumstances are present, as specified at subsections (aaa), (bbb) and (ccc). The director correctly determined that the petitioner had not established a qualifying relationship with V-U- because her marriage to him was terminated on [REDACTED] 2007, and the Form I-360 self-petition was not filed until August 29, 2011, more than four and one half years later.

On appeal, the petitioner "requests, if possible, for any amnesty/waiver to be granted to the untimely filing" of the self-petition. The petitioner cites no legal basis for this request. Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act allows a former spouse to file a self-petition for up to two years after divorcing and there is no exception to this rule. 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 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) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive this statutory deadline. Similarly, we lack the authority to waive the application of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act to the

¹ Name withheld to protect the individual's identity.

instant self-petition based on the claim, advanced by counsel on appeal, that the petitioner would have timely filed her Form I-360 self-petition had it not been for the claimed battery or extreme cruelty by her former husband.

As the petitioner did not file the I-360 self-petition within two years of the legal termination of her marriage to V-U-, she has not established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act. Because the petitioner is statutorily ineligible for the benefit sought, we do not reach the issue of whether she established that she is a person of good moral character and was subjected to battery or extreme cruelty by her former spouse.

Conclusion

On appeal, the petitioner has failed to establish a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

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

ORDER: The appeal is dismissed.