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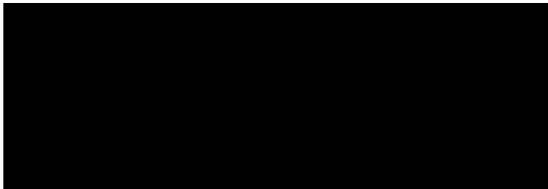
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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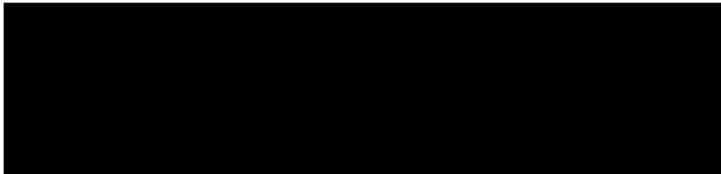


FILE: [Redacted]  
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Office: VERMONT SERVICE CENTER

Date: MAR 24 2008

IN RE: Petitioner:



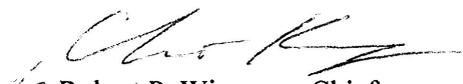
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, 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 classification as a preference immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her former spouse who was a lawful permanent resident of the United States at the time of the marriage and now is a United States Citizen.

The director denied the petition, finding that the petitioner failed to establish a qualifying relationship as the spouse of a citizen or lawful permanent resident of the United States and her eligibility for immigrant classification based on that relationship because she remarried before the petition was filed.

On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, an alien who has divorced an abusive United States lawful permanent resident may still self-petition for immigrant classification under section 204(a)(1)(B)(ii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

\* \* \*

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.

Section 204(a)(1)(B)(ii) (II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 record in this case provides the following pertinent facts and procedural history. The petitioner in this case is a native and citizen of Colombia who last entered the United States through Miami International Airport on April 22, 1990 as a B-2 visitor for pleasure with initial authorization to remain in the country until October 21, 1990. Said authorization was subsequently extended until February 28, 1991. On February 9, 1991, the petitioner married F-G-<sup>1</sup> in Miami, Florida. At that time, the petitioner's spouse was a U.S. lawful permanent resident. The marriage produced two children born on June 30, 1992 and October 20, 1994 respectively. On February 13, 1997, the petitioner was served with an Order to Show Cause and Notice of Hearing in deportation proceedings charging her as deportable for having remained in the United States beyond her period of authorized stay. The petitioner remains in proceedings before the Miami Immigration Court and her next hearing is scheduled for March 27, 2008.

On December 18, 2002, the marriage of the petitioner and F-G- ended in divorce.<sup>2</sup> On February 22, 2003, the petitioner married her second spouse. The petitioner filed this Form I-360 on September 15, 2006. On April 10, 2007, the director issued a Notice of Intent to Deny (NOID) the petition because the record showed that she no longer had a qualifying relationship as the spouse, intended spouse, or former spouse of a citizen or lawful permanent resident of the United States and that the petitioner failed to establish that she was eligible for immigrant classification under Section 203(a)(2)(A) of the Act, based on such a qualifying relationship. Counsel timely responded stating that the petitioner did provide ample evidence that the petitioner was subjected to battery and/or extreme cruelty and that her failure to timely file was due to fear of "reprisal" from her abusive spouse if she filed a self-petition. The petitioner did not provide evidence to address the issues raised in the NOID. On June 18, 2007, the director denied the petition for lack of the requisite qualifying relationship and eligibility for preference immigrant classification based on such a relationship. The petitioner, through counsel, timely appealed.

On appeal, counsel concedes that the petitioner failed to file her petition within the statutory period granted to aliens who have divorced their abusive spouses, however, counsel argues that the legislative intent of the statute is to protect women like the petitioner who have been subjected to years of abuse by her ex-spouse and was so damaged by the abuse that she could not file while still married to her ex-spouse. Counsel further contends that the statute of limitation for filing a Form I-360 is a "mere technicality" that should not preclude the petitioner from protection as a battered spouse, and that the statute and regulations do not bar the petitioner from immigrant classification under section 204(a)(1)(B)(ii) of the Act because she has remarried. As explained in detail below, counsel's contentions fail to establish the petitioner's eligibility.

*The Act Does Not Permit Remarriage of the Self-Petitioner Prior to Filing*

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Name withheld to protect individual's identity.

<sup>2</sup> Eleventh Judicial Circuit Court of Miami-Dade County, Florida, Case Number [REDACTED].

## I. History of Abused Spouse Status

### 1. 1994 Amendments to Section 204 of the Act.

Congress first granted an abused spouse the ability to self-petition in 1994, when it enacted the *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. 103-322, 108 Stat. 1796 (Sep. 13, 1994). Section 40701, located in Subtitle G, amended section 204 of the Act to permit an abused spouse and children of a United States citizen or lawful permanent resident to file a petition for immigrant status. Congress observed that:

Under current law only the United States citizen or lawful permanent resident spouse is authorized to file a relative petition, and this spouse maintains full control over the petitioning process. He or she may withdraw the petition at any time for any reason. The purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.<sup>3</sup>

Under the amended section 204 of the Act, an abused alien spouse would no longer have to rely on her abusive U.S. citizen or lawful permanent resident spouse to petition for immigrant status on her behalf.

On March 26, 1996, the legacy Immigration and Naturalization Service (INS), predecessor to Citizenship and Immigration Services (CIS), promulgated an interim rule to implement the changes mandated by section 40701 of the *Violent Crime Control and Law Enforcement Act of 1994*.<sup>4</sup> The rule outlined the various provisions for abused spouses of U.S. citizens and lawful permanent residents to file a self-petition. In explaining the interim rule, the INS stated:

The rule further provides, however, that a pending spousal self-petition will be denied or an approved self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser.<sup>5</sup>

The implementing regulatory language at 8 C.F.R. § 204.2(c)(1)(ii) states:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be

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<sup>3</sup> See H.R. Rep. 203-395, available at 1993 WL 484760 at p. 41.

<sup>4</sup> See 61 FR 13061 (Mar. 26, 1996), available at 1996 WL 131508.

<sup>5</sup> See 61 Fed. Reg. at 13063.

denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

Finally, the interim rule at 8 C.F.R. § 205.1(a)(3)(i)(E) established that approval of a self-petition made under section 204 of the Act is automatically revoked as of the date of approval:

[u]pon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act.

Thus, as early as 1996, section 204 of the Act was interpreted as requiring a self-petitioning abused spouse to be married at the time of filing and not to remarry prior to becoming a lawful permanent resident.<sup>6</sup>

## 2. 2000 Amendments to Section 204 of the Act.

In 2000, Congress further amended section 204 of the Act by enacting the *Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). Division B of that Act contained the *Violence Against Women Act of 2000* (VAWA 2000). Pursuant to VAWA 2000 and the VTVPA, seven groups of abused aliens became eligible to self-petition for classification as immediate relatives or preference immigrants under sections 204(a)(1)(A)(iii) or (iv), or 204(a)(1)(B)(ii) or (iii) of the Act.<sup>7</sup>

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<sup>6</sup> In a policy memo from T. Alexander Aleinikoff, Executive Associate Commissioner, entitled "Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents," (April 16, 1996), the INS Office of Programs emphasized the regulatory requirement that "[a] pending spousal self-petition will be denied or the approval of a spousal self-petition revoked, however, if the self-petitioning spouse remarries before he or she becomes a lawful permanent resident."

<sup>7</sup> Group 1 — abused alien spouses of U.S. citizens or lawful permanent residents (LPRs). Group 2 — alien spouses whose children are abused by the U.S. citizen or LPR spouse. Group 3 — alien children abused by their U.S. citizen or LPR parent. Group 4 — divorced abused spouses of U.S. citizens or LPRs who demonstrate a connection between the abuse suffered and the divorce and who file a petition within two years of the divorce. Group 5 — abused widowed spouses of U.S. citizens who file a petition within two years of the date of U.S. citizen's death. Group 6 — abused alien spouses of former U.S. citizens or LPRs who lost their immigration status within the last two years related to or due to an incident of domestic violence. Group 7 — abused alien children of former U.S. citizens or LPRs who lost their immigration status within the last two years related to or due to an incident of domestic violence. See VAWA §§ 40701-02; VTVPA §§ 1503(b) and (c).

The Battered Immigrant Women Protection Act of 2000 is contained within the VTVPA.<sup>8</sup> In VTVPA § 1502(a), Congress made three findings. First, it found that the goal of *VAWA 1994* was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships.<sup>9</sup> Second, it found that providing abused immigrant women and children with protection from deportation freed them to cooperate with law enforcement and prosecutors, without fear that the abuser would retaliate by withdrawing or threatening to withdraw, access to an immigration benefit under the abuser's control.<sup>10</sup> Third, Congress found there were several groups of abused women and children who did not have access to the immigration protections of *VAWA 1994*.<sup>11</sup> VTVPA §§ 1503(b) & (c) amended section 204 of the Act to permit an abused alien spouse, who had already terminated her marriage to the abusive U.S. citizen or lawful permanent resident, to self-petition, provided that the alien demonstrated a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the spouse.<sup>12</sup> Prior to this amendment, a self-petitioning abused spouse was required to be married to the abusive spouse at the time of filing the petition.

Congress also amended section 204(h) of the Act to permit an abused self-petitioning spouse *whose petition had already been approved* to remarry without having the approval of her petition revoked. Under the maxim of statutory construction, *expressio unius est exclusio alterius*,<sup>13</sup> the fact that Congress specifically addressed the issue of remarriage in the context of revocations but did not address it elsewhere means that Congress did not intend to change any other provisions related to remarriage. Under section 204(h) of the Act, remarriage of the alien after approval of the petition would not serve as the sole basis for revocation of the petition. Congress did not refer to the issue of remarriage in the other provisions of section 204 pertaining to abused spouses. Consequently, the director's interpretation that section 204 does not permit the remarriage of the abused spouse before her petition is filed was reasonable given that Congress only provided that *remarriage after approval* would not disqualify the abused spouse. The inclusion of remarriage in section 204(h) of the Act as a non-disqualifying factor, after petition approval, strongly suggests that remarriage is a disqualifying factor prior to petition approval. The prohibition against using remarriage as a basis for revoking an approved petition is likely based on a desire for finality. Once the abused spouse made a sufficient showing that her self-petition should be granted, and such petition was granted, there would not be any purpose in requiring the abused spouse to delay

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<sup>8</sup> VTVPA § 1501, et. seq.

<sup>9</sup> *Id.* at § 1502(a)(1).

<sup>10</sup> *Id.* at § 1502(a)(2).

<sup>11</sup> *Id.* at § 1503(a)(3).

<sup>12</sup> Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

<sup>13</sup> "Mention of one thing implies exclusion of another. When certain persons or things are specified in law . . . an intention to exclude all others from its operation may be inferred." See *Black's Law Dictionary*, 6<sup>th</sup> Edition (1990).

remarrying.<sup>14</sup>

The director's interpretation is consistent with the Congressional intent of *VAWA 1994* and *VAWA 2000*. The motivation of Congress in 1994 was to provide a means for an abused immigrant spouse to obtain immigration benefits over which her abusive spouse held complete control.<sup>15</sup> Because of such control, the immigrant spouse could hardly report the abuse to the police, or seek government assistance, for fear of jeopardizing any chance to obtain lawful status in the United States. *VAWA 1994* limited the abusive spouse's control by permitting the abused spouse to self-petition. However, the self-petitioning spouse was still required to be married to the abusive U.S. citizen or LPR at the time the petition was filed.<sup>16</sup> Congress found this unsatisfactory and in 2000 further amended section 204 to permit an abused immigrant spouse to file a self-petition within two years of the legal termination of the abusive marriage.<sup>17</sup>

However, the abused spouse is required to demonstrate a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the U.S. citizen or lawful permanent resident spouse.<sup>18</sup> Congress also provided that remarriage, after the petition had been approved, would not be a basis for revoking the petition.<sup>19</sup>

While Congress broadened the eligibility requirement to include divorced spouses filing within two years of the divorce, it decided only to include the possibility of remarriage in the section pertaining to divorced spouses that had approved petitions but had not adjusted status or entered the United States as a permanent resident. As recently as January 5, 2006, Congress enacted *VAWA 2005*, which made further amendments to provisions related to battered spouses and children.<sup>20</sup> Again, however, Congress made no provisions for a remarried alien to self-petition based upon her prior abusive marriage<sup>21</sup>. The fact that in three separate amendments to the original *VAWA* statute Congress left alone CIS's interpretation that remarriage prior to petition approval would result in a denial is compelling evidence that it considered the interpretation and found it an accurate view

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<sup>14</sup> Requiring an alien to be unmarried in order to be eligible for an immigration benefit is not limited to section 204 of the Act. For example, section 203 of the Act sets forth the preference allocation for family-sponsored immigrants. The first preference is the unmarried sons and daughters of U.S. citizens. *See* Section 203(a)(1) of the Act.

<sup>15</sup> H.R. Rep. 203-395, available at 1993 WL 484760 at p.41.

<sup>16</sup> *See* 8 C.F.R. § 204.2(c)(1)(ii)(1996).

<sup>17</sup> VTVPA § 1503.

<sup>18</sup> Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

<sup>19</sup> VTVPA § 1507(b), amending section 204(h) of the Act, 8 U.S.C. § 1154.

<sup>20</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law No. 109-162, (*VAWA 2005*).

<sup>21</sup> Congress made corrections to *VAWA 2005* in the Violence Against Women and Department of Justice Reauthorization Act – Technical Corrections, Public Law No. 109-271 (Aug. 12, 2006), but again made no allowance for a self-petitioner's remarriage prior to filing.

of Congressional intent. This fact is significant because "[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning."<sup>22</sup>

It is further noted that on December 9, 2005, in *Delmas v. Gonzalez*, 422 F.Supp. 2d 1299 (S.D. Fla. 2005), the District Court upheld CIS's interpretation of the VTVPA so as to disqualify an alien who had remarried before filing a self-petition. While we acknowledge that a district court's decision is not binding precedent, the decision underscores the fact that CIS's interpretation of the statute is reasonable. The court stated:

Plaintiff argues that there is no evidence that Congress intended remarriage to negate the need for protection of the abused spouse. The legislative history and context of VAWA and the VTVPA show otherwise. VAWA relief is limited to those vulnerable to abuse. The AAO apparently concluded that an abused spouse who remarries prior to filing a self-petition is not the type of battered immigrant woman Congress was concerned with when enacting VAWA or the VTVPA and, therefore, permissibly construed the statute to deny the instant petition.<sup>23</sup>

Based upon the above discussion, it is apparent that Congress wanted aliens with pending petitions to be either still married to the abusive spouse, or divorced within the last two years but not married to another person. Accordingly, we concur with the director's determinations that the petitioner has not established a qualifying relationship and her corresponding eligibility for preference immigrant classification based on such a relationship as required by section 204(a)(1)(B)(ii)(II)(aa),(cc) of the Act due to her divorce from F-G- and her remarriage to her second spouse before filing this petition.

#### *Ineligibility Due to Divorce from Abusive Spouse Over Two Years Prior to Filing*

Beyond the director's decision, the petitioner has also failed to demonstrate that she had a qualifying relationship with an abusive U.S lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act. In the present case, the petitioner was divorced from F-G- on December 18, 2002. She filed this Form I-360 petition on September 15, 2006 - more than three years after the divorce. Although the record shows that the petitioner's divorce was connected to F-G-'s abuse, the divorce occurred more than two years prior to the date this petition was filed. The statute provides no exception to the two- year limitation. Therefore, the petitioner also failed to establish a qualifying relationship with F-G- pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

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<sup>22</sup> *Bledsoe v. Palm Beach County Soil and Water Conservation Dist.*, 133 F.3d 816, 822 (11<sup>th</sup> Cir. 1998), citing *Florida National Guard v. Federal Labor Relations Authority*, 699 F.2d 1082, 1087 (11<sup>th</sup> Cir. 1983).

<sup>23</sup> *Delmas*, 422 F.Supp.2d at 1303.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision<sup>24</sup>. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). See also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. See e.g., *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Accordingly, the June 18, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that she has a qualifying relationship to an abusive U.S. lawful permanent resident and that she is eligible for classification as a preference immigrant based on such a relationship. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

The denial of the petition will be affirmed for the reasons stated above, with each considered an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.

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<sup>24</sup> While the director cited the petitioner’s ineligibility under section 204(a)(1)(B)(ii)(aa)(CC)(bbb) of the Act in his NOID, he did not include this ground for denial in his final decision.