



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 20561435

Date: MAY 11, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish a qualifying marital relationship and her corresponding eligibility for immigrant classification, as required. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

A petitioner who is the spouse or former spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner must establish that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act. Section 204(a)(1)(A)(iii)(II)(cc) of the Act. A petitioner who was a bona fide spouse of a U.S. citizen within the past two years and who demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty perpetrated by the U.S. citizen spouse remains eligible to self-petition under these provisions. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

In this case, the Director found, and the Petitioner does not contest, that the Petitioner's marriage was terminated in 2000, more than two years before she filed her petition in October of 2019. On appeal, the Petitioner asks that we consider the totality of the circumstances and favorably exercise our discretion.

We adopt and affirm the Director's decision. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("we join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's

decision for the reasons set forth in that decision.”). The plain language of section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act clearly states that to remain eligible for immigrant classification despite the termination of a marriage to U.S. citizen spouse, a petitioner must have been the bona fide spouse of a U.S. citizen “within the past 2 years.” There is no exception to this rule and we lack the authority to waive or disregard the requirements of the statute, as implemented by regulation. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). Because the Petitioner’s divorce occurred more than two years before she filed the instant VAWA petition, she cannot establish a qualifying relationship with her U.S. citizen spouse.¹ Additionally, because the Petitioner did not demonstrate a qualifying marital relationship, she also necessarily cannot establish that she is eligible for immediate relative classification based on such a relationship. The petition will therefore remain denied.

ORDER: The appeal is dismissed.

¹ We do not reach the additional statutory requirement of whether the Petitioner demonstrated a connection between the divorce and the claimed battery or extreme cruelty perpetrated by her former spouse.