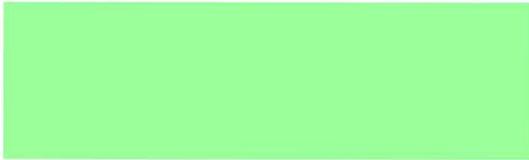


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

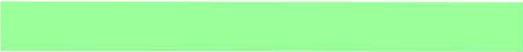


U.S. Citizenship
and Immigration
Services



Date: **AUG 18 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 determined that even if the petitioner had a qualifying relationship, she failed to establish that her former spouse battered or subjected her to extreme cruelty during the marriage. No evidence has been submitted by the petitioner on appeal.

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 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 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)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation,

including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

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 . . .

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Facts and Procedural History

The petitioner is a citizen of Bolivia who states that she entered the United States on May 14, 2001 without inspection. The record indicates that at the time the petitioner entered the United States, she was married to J-A-¹, a citizen of Bolivia. On July 5, 2007, the petitioner married Z-F-², a U.S. citizen, in New Jersey and they divorced on December 21, 2010. The petitioner filed the instant Form I-360 on June 27, 2011. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty and the legal termination of the petitioner's prior marriage to J-A-. The petitioner timely responded with additional evidence which

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

We find no error in the director's determination that the petitioner failed to establish that she had a qualifying relationship with Z-F-. Primary evidence of a qualifying relationship with a U.S. citizen spouse is a marriage certificate issued by civil authorities, and proof of the legal termination of all the self-petitioner's prior marriages. 8 C.F.R. § 204.2(c)(2)(ii). The petitioner indicated on Form G-325A, Biographical Information, that she married her first spouse J-A-, on December 25, 1997 in La Paz, Bolivia and they were divorced there on February 6, 2006. The director requested, in an RFE dated October 16, 2012, that the petitioner submit a final divorce decree or other evidence that her prior marriage to J-A- was legally terminated before she married Z-F-. In response, the petitioner submitted a final judgment of divorce from Z-F-, but no evidence that her marriage to her prior spouse, J-A-, was legally terminated. While the director identified this evidentiary deficiency again in his denial decision, the petitioner has not addressed the issue on appeal and she submits no evidence of the legal termination of her prior marriage.

A self-petitioning spouse must establish a qualifying relationship with the abusive U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa) of the Act. The validity of a marriage or divorce for immigration purposes is governed by the jurisdiction where the marriage was contracted or terminated. See *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975), and *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). The petitioner has not submitted evidence of her divorce from her prior spouse in Bolivia or evidence that her subsequent marriage to Z-F- was nonetheless valid under New Jersey law. Accordingly, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and that she is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

In addition, even if the petitioner had shown that her prior marriage to J-A- was legally terminated before she married Z-F-, she has failed to establish the requisite battery or extreme cruelty. Consequently she cannot demonstrate any connection between her divorce and such battery or extreme cruelty as required to establish a qualifying relationship with Z-F- despite their divorce under subsection 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's second spouse did not subject her to battery or extreme cruelty, and no evidence has been submitted on appeal to overcome this ground

for denial. The petitioner submitted below and in response to the RFE, a temporary restraining order and affidavits from her mother, father, sibling and three friends.³

In their affidavits, [REDACTED] the petitioner's mother, father and sibling respectively, recalled that the petitioner and Z-F- began living together in 2005 and married in July 2007 when their son, [REDACTED] was two years old. Mrs. [REDACTED] indicated that Z-F- argued with the petitioner, tried to hit her, wanted her to stay home, did not like that she attended church, and thought she was cheating on him. Mr. [REDACTED] wrote that Z-F- was jealous of a male friend the petitioner knew from church, made her stay home with their son, and stole her jewelry. [REDACTED] stated that the petitioner and Z-F- argued, Z-F- said she could not go places alone, told her how to cook and clean, and brought food home for himself from work. The petitioner's sibling was surprised in November 2010, when Z-F- called their home in Bolivia and said he had decided to separate from the petitioner whom he believed was cheating on him with a man from church. None of the affiants provided probative details concerning the claimed abuse, or indicated that they witnessed or observed the effects of Z-F-'s battery or extreme cruelty on the petitioner.

In her affidavit, [REDACTED] stated that she and the petitioner have been friends for four years during which Z-F- drove the petitioner to and from church and Ms. [REDACTED]'s home, and called to check in on the petitioner during their visits. Ms. [REDACTED] explained that Z-F- asked for change from the petitioner after she went to the supermarket, the petitioner spoke only briefly with her by telephone when Z-F- was at home, Z-F- sometimes insulted the petitioner and did not allow her to work. In his affidavit, [REDACTED] recalled that when the petitioner visited his wife she sometimes seemed nervous and she explained that her husband does not like noise when he arrives home. In his typed affidavit, [REDACTED] stated that he and the petitioner are friends from church, and after she did not attend church for a number of months he learned that her husband had locked her and her belongings in the house. He provided no further probative information. In his handwritten affidavit, Mr. [REDACTED] recalled that one day in the summer of 2010, Z-F- passed by him and the petitioner three times in a threatening manner. None of the affiants provided probative details concerning the claimed abuse or indicated that Z-F- battered the petitioner, threatened her with violence, or subjected her to psychological or sexual abuse or other conduct constituting extreme cruelty as defined by the regulation.

Qualifying battery or extreme cruelty must have taken place during the self-petitioner's marriage to the abuser. 8 C.F.R. § 204.2(c)(1)(vi). In this case, the temporary restraining order (TRO) was issued by a New Jersey court against Z-F- on March 29, 2011, nearly three months after he was divorced from the petitioner on December 21, 2010. The TRO includes a complaint attributed to the petitioner in which she indicated that, among other things, Z-F- threatened her with a steak knife in 2006. Because the TRO was issued after the petitioner was no longer married to Z-F- and the incident for which it was granted occurred on March 21, 2011, three months after they divorced, the claims contained therein can only be used to establish a pattern of abuse and violence and support a claim that qualifying abuse

³ The petitioner also submitted a Spanish-language letter from [REDACTED] which we cannot consider without the translation and certification required by 8 C.F.R. § 103.2(b)(3).

also occurred. *See* 8 C.F.R. § 204.2(c)(2)(iv). The petitioner has not submitted a personal affidavit or statement detailing any claims of abuse, including the incidents described in the TRO complaint as occurring during the marriage. In their affidavits, the petitioner's friends and family also do not mention the incidents described in the TRO.

On appeal, the petitioner submits no additional evidence of battery or extreme cruelty. The preponderance of the evidence does not establish that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage. The relevant evidence does not demonstrate that the petitioner's spouse ever battered or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that her former spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish a qualifying spousal relationship with a U.S. citizen, her corresponding eligibility for immediate relative classification, and the U.S. citizen spouse's battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three 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.