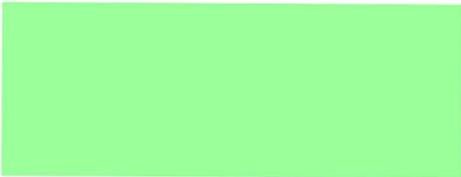


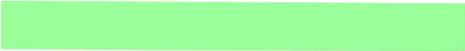


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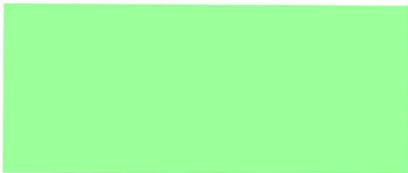


Date: **SEP 18 2014** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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:

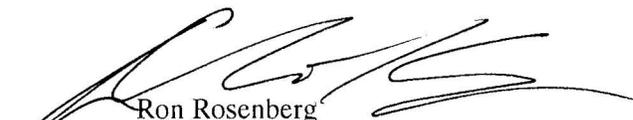


INSTRUCTIONS:

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)(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 a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner entered into marriage with her lawful permanent resident spouse in good faith and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) 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 the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, 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). An alien who has divorced an abusive United States lawful permanent resident 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 lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 eligibility requirements for a self-petition under section 204(a)(1)(B)(ii) 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 . . . lawful permanent resident 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) 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.

* * *

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner is a citizen of Guyana who entered into the United States on July 6, 2006, as a B-2 nonimmigrant visitor. She married C-R-¹, a lawful permanent resident of the United States, on August 31, 2007, in New York. The petitioner divorced C-R- on January 27, 2010. The petitioner filed the instant Form I-360 self-petition on October 14, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty and entry into marriage with her ex-husband in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

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

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's ex-husband did not subject her to battery or extreme cruelty and the applicant did not submit any evidence on appeal to overcome this ground for denial. In her affidavit, the petitioner stated that her ex-husband was an alcoholic who became physically aggressive when drunk. She also indicated that her ex-husband would get angry when he could not perform sex, would scream and curse, and once pushed her off the bed. The petitioner indicated that one time he knocked food off the table. The petitioner stated that her former husband threatened to kill himself if she left him. In her affidavit in response to the RFE, the petitioner briefly stated that her former husband threatened to have her deported. She added that in 2009, she was afraid of him because another man had obtained a protective order against him. The petitioner's description of battery lacks probative details, and the other behavior she describes does not constitute extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted an affidavit from her daughter, [REDACTED], in which Mrs. [REDACTED] indicated that the petitioner's ex-husband drank, yelled at the petitioner, hit walls, and on one occasion knocked food off the table. The petitioner submitted an Incident Information Slip dated April 10, 2009, which reflects that the petitioner filed a claim of harassment against her ex-husband. Her statement in the Slip indicated that on April 8, 2009, her ex-husband said he would kill her and himself. In response to the RFE, the petitioner also submitted a letter from the [REDACTED] Department indicating that they were reviewing her request for records, and the Temporary Protective Order against her ex-husband obtained by another man who is identified as the protected individual, not the petitioner.

When considered in the aggregate, the relevant evidence fails to establish that the petitioner's ex-husband subjected her to battery during their marriage. The petitioner recounted that her ex-husband was physically aggressive, but she failed to provide a probative description of any specific incident that resulted or threatened to result in physical or mental injury, or was otherwise part of an overall

¹ Name withheld to protect the individual's identity.

pattern of violence as encompassed in the definition of battery or extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's daughter did not mention any incidents of battery, and the incidents she did describe, such as yelling, hitting the wall and knocking food off the table, do not constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The Incident Information Slip indicated that the petitioner reported harassment to the police, but she did not provide any information regarding the outcome of the said report. In addition, the Slip says that the petitioner's ex-husband threatened to kill her, but the petitioner herself never mentioned such a threat in either of her affidavits. Lastly, the petitioner is not the protected individual in the temporary protective order against her ex-husband.

On appeal, counsel contends that the director failed to follow the "any credible evidence" standard and that the petitioner's own statements are the most essential evidence. Counsel has not provided any evidence that the director failed to accord proper weight to the applicant's statements or that she raised the burden of proof. The director considered and addressed the petitioner's affidavits and other relevant evidence in her denial decision, but as explained above, the petitioner's affidavits lacked specific examples and probative detail, and the other evidence was insufficient to show that the applicant was battered or subjected to extreme cruelty by her ex-husband. The petitioner has not established that her former husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B(ii)(I)(bb) of the Act.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that she married C-R- in good faith and counsel's claims on appeal do not overcome this ground for denial. The relevant evidence on the record contains the petitioner's affidavits, an affidavit from her daughter, her 2007 tax return transcript, copies of bills and bank statements, and photographs of the petitioner and her former spouse.

In her first affidavit, the petitioner stated that she met C-R- through her friend who was C-R-'s cousin. She stated that her ex-husband came over and she fell in love with him. She indicated that they went to a party and the next weekend she went to his birthday party and had breakfast with him afterwards. She recalled that after breakfast he stayed with her at her apartment for a week, then they moved in together and one day C-R- said "let[']s get married." Her daughter gave them her blessing and they got married. In her second affidavit, the petitioner added that they had a civil ceremony that her daughter attended. She did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In her affidavit, the petitioner's daughter stated that she visited the petitioner and her ex-husband, and that she attended their wedding. She did not describe her observations of the couple in probative detail or otherwise provide detailed information establishing her personal knowledge of the relationship.

The other relevant evidence does not show that the petitioner entered into her marriage in good faith. The photographs show that the petitioner and her ex-husband were pictured together on a few unspecified occasions in 2007 but are not accompanied by any explanation of their significance. The bank statements do not show daily activity indicating that both the petitioner and her ex-husband

used the account. The [REDACTED] telephone bill is only in the petitioner's name and is dated after she divorced her ex-husband, as are the Cable and [REDACTED] bills. The federal income Tax Return Transcript for the year the petitioner married her ex-husband shows that they once jointly filed their return, but without probative testimony regarding their relationship, the transcript does not establish the petitioner's marital intentions.

On appeal, counsel asserts that the petitioner submitted sufficient evidence of her good-faith marriage and that the director failed to apply the "any credible evidence" standard. The director complied with the statute and regulation by considering all of the relevant evidence, and counsel has not provided any evidence that the director failed to accord proper weight to the applicant's statements and other evidence. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her ex-husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Counsel also asserts director erred by denying the petition without first issuing a Notice of Intent to Deny (NOID). Counsel quotes the former regulations. A NOID is no longer required prior to denial under the current regulation at 8 C.F.R. § 204.2(c)(3)(ii). Moreover, the petitioner has had two opportunities to supplement the record: in response to the director's RFE and on appeal.

Qualifying Relationship

Beyond the director's decision,² the petitioner has failed to demonstrate that she had a qualifying relationship with a lawful permanent resident and that she is eligible for immediate relative classification based on such a qualifying relationship. In her affidavit, the petitioner stated that she was married twice before she married C-R-. In her affidavit in response to the RFE, the petitioner indicated that there are no formal documents or papers showing her marriage or divorce to her first husband, but offered no further evidence to show that she was divorced from her first husband when she married C-R-.

In addition, as the petitioner failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with her ex-husband and was eligible for preference immigrant classification based on their relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and (cc) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. She has not demonstrated that she was subjected to battery or extreme cruelty by her ex-husband during their marriage and that

² 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. 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).

she entered into marriage with him in good faith. Beyond the director's decision, she also has not demonstrated the requisite qualifying relationship with a lawful permanent resident and her corresponding eligibility for preference immigrant classification. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act on these 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.