



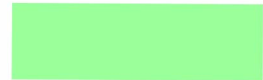
U.S. Citizenship
and Immigration
Services

(b)(6)



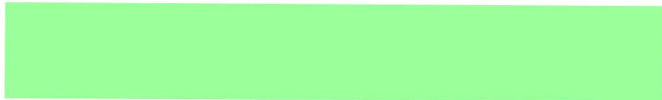
Date: **FEB 12 2015** Office: VERMONT SERVICE CENTER

FILE:



IN RE:

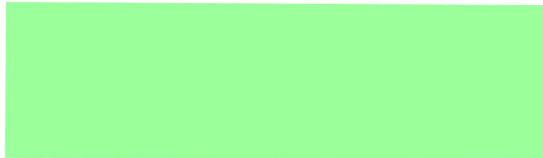
Self-Petitioner:



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.

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 sustained and the petition will be approved.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of 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 finding that the petitioner had not established a qualifying relationship with a lawful permanent resident of the United States, or that she is eligible for immigrant classification based on said relationship, because she had not shown that her former husband's death and resultant loss of immigrant status were due to an incident of domestic violence.

Applicable Law

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).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –
 - (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence

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 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 citizen or 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.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

Evidence for a spousal self-petition –

(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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States on in March, 2002. She married I-A-, then a lawful permanent resident of the United States, on [REDACTED] I-A- committed suicide on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on September 10, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's qualifying relationship with a lawful permanent resident of the United States. 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 timely appealed. On appeal, counsel submits a brief.

The sole issue on appeal is whether the petitioner has demonstrated the existence of a qualifying relationship with I-A- at the time this petition was filed, and whether she is eligible for immigrant classification based on said relationship.¹

The AAO reviews these proceedings *de novo*. A full review of the record establishes the petitioner's eligibility for the following reasons.

Qualifying Relationship

I-A- committed suicide within two years prior to the filing of the instant petition and consequently lost his lawful permanent resident status upon his death. To remain eligible for classification under section 204(a)(1)(B)(ii) of the Act in a case such as this, a self-petitioner must show that his or her spouse's loss of status was "due to an incident of domestic violence." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa). Accordingly, the petitioner must demonstrate that I-A-'s suicide was due to an incident of domestic violence.

In her affidavit, the petitioner recounted in probative detail numerous incidents of abuse inflicted upon her by I-A- during their marriage. The petitioner stated that I-A- sexually assaulted her. She described various occasions on which I-A- physically battered her, including slamming her head into a mirror, dragging her on the floor, and stabbing her with a fork.

The petitioner also described several incidents in which I-A threatened to kill himself, the petitioner, and their child. The petitioner indicated that when she started volunteering outside of the home, I-A- told her that she would find him dead one day when she returned in order to dissuade her from volunteering. When the petitioner began taking English classes, I-A- threatened to poison them both. The petitioner recalled incidents in which I-A- put a knife to his veins and threatened to kill himself if the petitioner did not give him money. On another occasion, I-A- threatened to impale himself in the stomach with a knife. The petitioner indicated that I-A- controlled her through fear for his and their child's well-being, and described situations in which

¹ On appeal, we issued a RFE of the petitioner's good moral character. We received sufficient evidence in response to establish the petitioner's good moral character.

I-A- threatened to kill the three of them. Eventually, the petitioner began working in a nursery, and she came home one day from work to find that I-A- had hung himself.

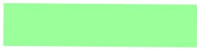
The petitioner also submitted a psychological assessment prepared by [REDACTED] a licensed social worker. [REDACTED] indicated that the petitioner reported that I-A- was verbally abusive and controlling, and that he told the petitioner that he wished she was dead, stabbed her with a fork, and threatened to have her deported without their child. In another assessment, [REDACTED] confirmed that I-A- physically fought with the petitioner and pushed her to the floor, resulting in injuries to the petitioner. The petitioner also submitted a psychosocial assessment prepared by [REDACTED] a licensed independent social worker, in which she indicated that I-A- threatened that the petitioner would find him dead if she left the house to do other things. [REDACTED] also stated that I-A- wanted the petitioner to drink poison with him so she would never be with anyone else, and on one occasion when the petitioner was in the car with I-A- and told him she wanted to go back to school, he threatened to crash the car into a wall and accelerated suddenly.

On appeal, the petitioner contends that I-A- subjected her to verbal, physical, sexual, and psychological abuse which included repeated threats and graphic descriptions of suicide. The petitioner asserts further that I-A-'s threats to kill himself, the petitioner, and their child played an integral role in the abuse, and that I-A- used these violent threats as a method of controlling her and which conforms to well-documented patterns of domestic violence. The petitioner also contends that I-A-'s suicide, after many years of threats, was his last act of domestic abuse committed against the petitioner, as he knew that she would be the one to find him and would have to deal with the aftermath of his actions.

A *de novo* review of the record reveals that the petitioner has established that I-A-'s suicide, and his resulting loss of immigration status, was due to an incident of domestic violence. On appeal, the petitioner cites to credible and substantive evidence that in the field of domestic violence assessment, threats of homicide or suicide are a recognized form of coercion used by abusers to exert power and control over their victims. The testimony and other evidence in this particular case establish that I-A-'s suicide was part of a larger pattern of abuse. The record contains probative and detailed testimony regarding I-A-'s history of suicide threats as a method of control, in addition to other forms of physical, sexual, and psychological abuse. The petitioner has demonstrated that she was the bona fide spouse of a lawful permanent resident and that I-A-'s suicide and resultant loss of lawful permanent resident status were due to an incident of domestic violence pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act.

The petitioner has established that she had a qualifying relationship with a lawful permanent resident of the United States. The petitioner meets all the remaining statutory requirements. Accordingly, the petitioner has demonstrated that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii).

(b)(6)



NON-PRECEDENT DECISION

Page 6

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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 been met and the appeal is sustained.

ORDER: The appeal is sustained.