

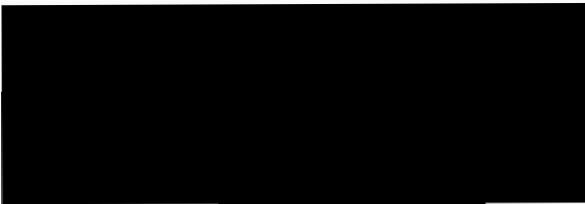
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B9

FILE:

EAC 06 205 50219

Office: VERMONT SERVICE CENTER

Date: MAR 04 2009

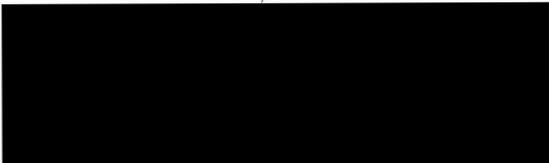
IN RE:

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 immigrant classification under section 204(a)(1)(A)(iii) of 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 because the petitioner did not establish that she had a qualifying relationship with a U.S. citizen, that she entered into such a qualifying relationship in good faith, that she was battered or subjected to extreme cruelty by the U.S. citizen and that she resided with the U.S. citizen.

On appeal, counsel submits a brief and a copy of the petitioner's divorce judgment.

Section 204(a)(1)(A)(iii) 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 a 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, 8 U.S.C. § 1154(a)(1)(J) 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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 . . . 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)(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:

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ecuador who states on the Form I-360 that she entered the United States (U.S.) on May 15, 1992. On November 6, 1996, the petitioner married M-W-¹, a U.S. citizen, in New York. On April 1, 2003, the petitioner filed a prior Form I-360,² which was denied on January 13, 2005 for lack of the requisite entry into the marriage in good faith, joint residence, good moral character and battery or extreme cruelty. The petitioner filed an untimely appeal, which the director treated as a motion to reopen. The director again denied the petition on June 20, 2005 for lack of the requisite battery or extreme cruelty, entry into the marriage in good faith and joint residence.

The petitioner filed the instant Form I-360 on June 29, 2006. On January 18, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of a qualifying relationship, good-faith entry into such a relationship, joint residence and battery or extreme cruelty. The petitioner did not respond to the NOID and the director denied the petition on the grounds cited in the NOID on June 13, 2007. Counsel timely appealed.

On appeal, counsel submits a brief and evidence that the petitioner and M-W- were divorced on November 24, 2003. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial. We affirm the director's determinations. Beyond the decision of the director, the petitioner has also failed to demonstrate that she was eligible for immediate relative classification based on her relationship with M-W-.

¹ Name withheld to protect individual's identity.

² Receipt number EAC 03 152 53353.

Qualifying Relationship

The petitioner submitted a copy of M-W-'s action for divorce below, but did not submit evidence of the legal termination of their marriage, as the NOID requested. On appeal, the petitioner submits the judgment of their divorce on November 24, 2003.³ A self-petitioner who has divorced her abuser may establish a qualifying relationship only if she demonstrates that her petition was filed within two years of the divorce and that the divorce was connected to the former spouse's battery or extreme cruelty. 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). The instant Form I-360 was filed on June 29, 2006, over two years after the petitioner was divorced. The petitioner has also failed to establish that M-W- subjected her or any of her children to battery or extreme cruelty during their marriage. Consequently, the petitioner has failed to demonstrate that she had a qualifying relationship with M-W- pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner has also failed to establish the requisite eligibility for immediate relative classification. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that she had a qualifying relationship with M-W-. She consequently has also failed to establish that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

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). 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).

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with M-W- in good faith:

The petitioner's June 23, 2004 affidavit;

³ New York County, New York Supreme Court, Matrimonial Part 890, Index Number [REDACTED]

- Copies of Public Service Electric and Gas Company (PSEG) bills jointly addressed to the petitioner and M-W- at a residence on [REDACTED] in Union City, New Jersey and dated between April and August 1997;
- May 11, 1998 letter from Hudson United Bank stating that the petitioner and M-W- had a joint savings account with the bank since April 7, 1997;
- Undated letter from Hudson United Bank stating that the petitioner “or” M-W- had maintained an account at the bank since April 4, 1994;
- Joint apartment lease signed by the petitioner and M-W- on November 29, 1996 for the term of December 1, 1996 to November 30, 1997 for the residence on [REDACTED] in Union City, New Jersey; and
- Two photographs of the petitioner and M-W- at their wedding.

In her affidavit, the petitioner states that she met M-W- at a party on an unspecified date in 1996. The petitioner states that her “romance with [M-W-] was so wonderful that [they] decided to get married” and that he should move into her apartment. The petitioner does not further describe how she met her husband, their courtship, wedding, shared residence and experiences in any probative detail. Her testimony alone is thus insufficient to establish that she entered into marriage with M-W- in good faith.

The record also contains inconsistent statements by the petitioner regarding her shared residence with M-W-. On the petitioner’s prior Form I-360, she stated that she lived with M-W- from November 1996 to January 2000 and that they last resided together at the [REDACTED] address. However, on the present Form I-360, the petitioner states that she resided with M-W- from November 1996 until 1998 and that their last joint residence was on [REDACTED] in Union City, New Jersey. Although the director specifically requested the petitioner to explain this discrepancy in the NOID, the petitioner did not respond to the NOID and offers no explanation on appeal.

The PSEG bills and bank letters present further discrepancies. The bank letters alternately claim that the petitioner or her husband opened an account in 1994 or 1997. The discrepancy between the letters detracts from their probative value. In addition, the petitioner submitted no bank statements or other evidence that she and M-W- actually used the account. The jointly addressed PSEG bills predate the former couple’s lease for the [REDACTED] address and the petitioner does not state the date that she and M-W- began residing together at the [REDACTED] address. In addition, the PSEG bills list an apartment number that is not stated on the lease.

Finally, the two photographs picture the petitioner and M-W- at their wedding, but they do not establish that she entered into their marriage in good faith.

The petitioner failed to provide detailed, probative testimony regarding how she met M-W-, their courtship, wedding, shared residence and experiences. The petitioner also failed to explain discrepancies in the record regarding her purported residence with M-W-. The PSEG bills and bank letters present further, unresolved inconsistencies. Considered in the aggregate, the relevant evidence

fails to demonstrate that the petitioner entered into marriage with M-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with M-W-. As discussed in the preceding section, the petitioner failed to explain significant discrepancies in the record regarding her purported residence with M-W-. The PSEG bills, lease and bank letters present further inconsistencies and the photographs do not picture the petitioner and M-W- in a residential setting. In addition, the petitioner failed to provide detailed, probative testimony describing her joint residence with M-W- and did not provide a clear statement of the addresses and dates that she resided with M-W-, as requested by the director in the NOID.

In sum, the relevant evidence fails to demonstrate that the petitioner resided with M-W-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that M-W- battered and subjected her to extreme cruelty:

- The petitioner's June 23, 2004 affidavit;
- November 23, 2002 statement of the petitioner's friend, submitted with the petitioner's prior Form I-360;
- July 15, 2002 affidavit of the petitioner's friend, submitted with the petitioner's prior Form I-360;
- February 24, 2005 form letter from Women Rising in Jersey City, New Jersey; and
- February 8, 2002 psychological evaluation of the petitioner by [REDACTED]

In her affidavit, the petitioner stated that after their marriage, she realized that M-W- was using drugs and that he took her money to buy alcohol and drugs. The petitioner reports that M-W- yelled at her with cruel words and forced her to have sex against her will. The petitioner does not describe any particular incidents of abuse in detail and her testimony is insufficient to establish her claim.

The brief statements of the petitioner's friends also fail to demonstrate the requisite battery or extreme cruelty. [REDACTED] states that the petitioner was depressed during her marriage because M-W- "was treating her bad . . . because he had become [sic] an alcoholic and a drug addict." [REDACTED] states that M-W- would steal the petitioner's money and threaten the petitioner. She states that on one unspecified occasion she observed M-W- threaten and insult the petitioner, but [REDACTED] does not describe the incident in detail. [REDACTED] merely states that the petitioner was suffering because of her "abusive husband." [REDACTED] does not state the basis for his knowledge and does not describe any incidents of abuse in detail.

The form letter from Women Rising states that the petitioner went to the organization on January 21, 1998 “seeking Domestic Violence Guidelines.” The letter does not discuss the petitioner’s situation or indicate that the petitioner received counseling or other services from the organization.

evaluation also does not demonstrate that M-W- subjected the petitioner or any of her children to battery or extreme cruelty. states that the petitioner’s former counsel requested the evaluation to “determine if [the petitioner] left her husband due to constant abuse.” states that his evaluation was based on a single meeting with the petitioner of unspecified length. He conveys that the petitioner told him M-W- used drugs, started to steal money from her and that she eventually threw him out of the house. states that the petitioner saw M-W- a couple of times after their separation, but later learned that he was in jail. does not describe any abuse inflicted by M-W- upon the petitioner or any of her children. also does not diagnose the petitioner with any mental health condition and states that she is “free of any major psychiatric or mental disorder.”

The brief testimony of the petitioner and her friends lacks probative, detailed descriptions of specific incidents of abuse and their statements are insufficient to demonstrate the requisite battery or extreme cruelty. The letter from Women Rising is dated over seven years after the petitioner visited the organization and provides no probative information. evaluation does not state that the petitioner experienced any domestic violence inflicted upon her or her children by M-W-.

In sum, the relevant evidence fails to establish that M-W- subjected the petitioner or any of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she had a qualifying relationship with her former U.S. citizen husband, was eligible for immediate relative classification based on such a relationship, entered into such a relationship in good faith, resided with the U.S. citizen and that she or any of her children were subjected to battery or extreme cruelty by the U.S. citizen during the qualifying relationship. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.