

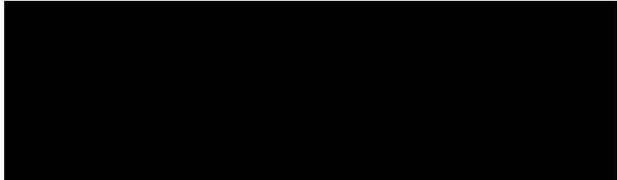
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

EAC 06 212 51765

Office: VERMONT SERVICE CENTER

MAR 30 2009

IN RE:

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:

SELF-REPRESENTED

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)(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 because the petitioner did not establish that she was battered or subjected to extreme cruelty by her intended spouse.

On appeal, the petitioner submits a brief.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse or intended 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 or intended marriage with the U.S. lawful permanent resident in good faith and that during the marriage or intended marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse or intended spouse. In addition, the alien must show that he or she is eligible to be classified as the spouse of a lawful permanent resident under section 203(a)(2)(A) of the Act (or would have been eligible but for the abuser's bigamy), resided with the abuser, 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)(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 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 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 [or intended marriage] to the abuser.

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:

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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Philippines who states on the Form I-360 that she first entered the United States on September 28, 1991. On December 25, 1994 the petitioner married R-B¹, a U.S. lawful permanent resident, in Las Vegas. After their marriage, the petitioner states that she found out that her husband had not terminated his prior marriage to another woman in the Philippines.

On January 22, 2007, an immigration judge ordered the petitioner excluded from the United States. On December 30, 2008, the Board of Immigration Appeals (BIA) dismissed the petitioner's appeal.

The petitioner filed this Form I-360 on July 13, 2006. On March 7, 2007 the director issued a Request for Evidence (RFE) of a qualifying relationship and battery or extreme cruelty. The petitioner requested additional time to respond. On May 29, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish a qualifying relationship and corresponding eligibility for preference immigrant classification, as well as battery or extreme cruelty. In response to the NOID, the

¹ Name withheld to protect individual's identity.

petitioner submitted a psychological report and the declaration of her nephew. On September 17, 2007, the director denied the petition for failure to demonstrate the requisite battery or extreme cruelty and the petitioner timely appealed.

On appeal, the petitioner claims that the evidence submitted below, in the aggregate, establishes her eligibility and that the director did not acknowledge the cruelty of R-B-'s bigamy. We concur with the director's determination. The petitioner's assertions on appeal do not overcome the ground for denial.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that R-B- battered or subjected her to extreme cruelty:

- The petitioner's June 10, 2006 declaration;
- Declaration of the petitioner's nephew, [REDACTED] and
- Psychological evaluation of the petitioner by [REDACTED]

In her declaration, the petitioner stated that R-B- did not put her name on the title to one of their two jointly owned properties, that he threw and slammed things and said he was not afraid to kill the petitioner or her father. The petitioner further asserted that her intended husband "bled [her] dry financially" and that she was "used and abused physically, financially, sexually and emotionally." The petitioner does not, however, describe any particular incident of abuse in probative detail. The petitioner's brief assertions are insufficient to demonstrate that her intended spouse subjected her to battery or extreme cruelty during their intended marriage.

The declaration of the petitioner's nephew also lacks probative information sufficient to establish the petitioner's claims. [REDACTED] stated that he frequently witnessed R-B-'s "violent outbursts" at the petitioner, but he does not describe any such outburst in detail. [REDACTED] also asserted that R-B- insulted and threatened the petitioner, threw and slammed things and said he was not afraid to kill the petitioner or her father. [REDACTED] did not discuss any of these actions in detail. [REDACTED] further stated that he "personally kn[e]w" that R-B- "was physically, emotionally, sexually and financially abusing [the petitioner]," but [REDACTED] did not state the basis for his knowledge or describe any particular instance of abuse.

While we do not question [REDACTED] expertise, her evaluation is also of little probative value. [REDACTED]'s evaluation is based on two meetings of unspecified length with the petitioner in 2007, nearly five years after the petitioner stated that she separated from R-B-. [REDACTED] diagnosed the petitioner with major depressive disorder and post-traumatic stress disorder, stated that the petitioner was prescribed anti-depressant medications and noted that one source of the petitioner's psychological distress "may be [R-B-'s] verbal abuse or his homicidal threats" (emphasis added). Yet inasmuch as it recounts the alleged abuse, [REDACTED] evaluation is inconsistent with the petitioner's testimony. [REDACTED] described several actions of R-B-

that the petitioner did not mention in her own declaration. also discussed no physical or sexual abuse although both the petitioner and her nephew asserted that such abuse occurred.

On appeal, the petitioner asserts that the fraud perpetrated on her by R-B's bigamy is "obvious cruelty" that the director did not consider. The record does not support the petitioner's claim that R-B's bigamy constituted extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner herself does not discuss the bigamy in her declaration except to note that R-B- "never indicated that he had been married before." In addition, at the January 22, 2007 hearing before the immigration judge in her exclusion proceedings, the petitioner indicated that by 1996, she knew of R-B-'s bigamy, but she did not seek a divorce and that since she separated from him in 2002, she had no idea of his whereabouts. The record does not indicate that R-B-'s bigamy and related deception were, for example, aimed at controlling the petitioner, were part of an overall cycle of violence or otherwise constituted psychological abuse.

In sum, the preponderance of the relevant evidence does not establish that R-B- subjected the petitioner to battery or extreme cruelty during their intended marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

The petitioner has not demonstrated that R-B- subjected her to battery or extreme cruelty during their intended marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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.