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U.S. Citizenship  
and Immigration  
Services

By

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: **MAY 15 2009**

EAC 07 005 50885

IN RE:

[Redacted]

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:

[Redacted]

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.

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center 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 Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that, because her husband had been deceased for more than two years at the time she filed her petition, the petitioner failed to establish that she has a qualifying relationship with a United States citizen, or that she is eligible for preference immigrant status on the basis of such a relationship. The director also found that the petitioner had failed to establish that she had been subjected to battery or extreme cruelty by her husband.

Counsel filed a timely appeal on August 30, 2007. Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within thirty days. The AAO, however, did not receive this additional brief and/or evidence. Thus, the AAO deems the record complete and ready for adjudication.

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).

Section 204(a)(1)(A)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen 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 United States citizen within the past 2 years and –
  - (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence . . . .
  - (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
  - (ccc) who 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)(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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

\* \* \*

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

\* \* \*

- (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.
- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section

101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) 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.
- (ii) *Relationship.* A self-petition file 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. . . .

\* \* \*

- (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.

- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The petitioner is a citizen of Peru who entered the United States in B-2 visitor status on August 7, 2001. She married J-L,<sup>1</sup> a citizen of the United States, on June 5, 2003 in Stamford, Connecticut. J-L- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on July 25, 2003. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date.

J-L- died from a self-inflicted gunshot wound on April 19, 2004. As a result of J-L-'s death, the Forms I-130 and I-485 were denied on September 14, 2005.

The petitioner filed the instant Form I-360 on October 3, 2006. The director issued a request for additional evidence on October 13, 2006, and requested additional evidence to establish that the petitioner is a person of good moral character, and that she married J-L- in good faith. The petitioner responded on December 6, 2006. The director issued a notice of intent to deny (NOID) the petition on April 26, 2007, which notified the petitioner of deficiencies in the record and afforded her the opportunity to submit additional evidence to establish that she was subjected to battery or extreme cruelty by J-L-, as well as any evidence she believed would overcome the statutory requirement of

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<sup>1</sup> Name withheld to protect individual's identity.

filing within two years of the legal termination of the marriage. The petitioner responded on June 25, 2007.

The director denied the petition on July 30, 2007.

### **Qualifying Relationship and Eligibility for Classification as an Immediate Relative**

Counsel concedes that the marriage between the petitioner and J-L- was legally terminated more than two before the filing of the Form I-360: J-L- died on April 19, 2004, but the Form I-360 was not filed until October 3, 2006. On the Form I-290B, counsel states the following:

Although the petitioner did not file her I-360 petition until over two years following her husband's death, as USCIS alleges, the minimal four month delay<sup>2</sup> was a direct result of the severe depression she was suffering from her late husband's suicide,<sup>3</sup> and as such, she should not [be] punished for not filing the petition within two years. . . .

Although not specifically stated as such, counsel is, in essence, arguing that the doctrine of equitable tolling should be applied to this case. She is arguing that the statutory limitation contained in section 204(a) of the Act as it relates to the petitioners who are no longer married at the time of the filing of the Form I-360 should be tolled due to the equities involved in this case.

The equitable tolling doctrine is presumed to apply to every federal statute of limitation. *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946); *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1188 (9<sup>th</sup> Cir. 2001). However, not every statutory time limit is a statute of limitations subject to equitable tolling. A crucial distinction exists between statutes of limitation and statutes of repose. *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9<sup>th</sup> Cir. 2003). A statute of limitations limits the time in which a plaintiff may bring suit after a cause of action accrues. A statute of repose, in contrast, "cuts off a cause of action at a certain time irrespective of the time of accrual of the cause of action." *Weddel v. Sec'y of H.H.S.*, 100 F.3d 929, 931 (Fed. Cir. 1996). Statutes of repose are not subject to equitable tolling. *Lampf Pleva, Lipkin, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991) (superseded on other grounds); *Weddel v. Sec'y of H.H.S.*, 100 F.3d at 930-32.

For example, several federal circuits have held that the 90 and 180 day filing deadlines for motions to reopen removal (or deportation) proceedings are statutes of limitation subject to equitable tolling. See *Socop-Gonzalez*, 272 F.3d at 1187-90; *Iavorski v. I.N.S.*, 232 F.3d 124, 134 (2<sup>nd</sup> Cir. 2000); *Riley v. I.N.S.*, 310 F.3d 1253, 1257 (10<sup>th</sup> Cir. 2002); *Borges v. Gonzalez*, 402 F.3d 398, 406

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<sup>2</sup> The delay was longer than four months: although J-L- died on April 19, 2004, the petition was not filed until October 3, 2006.

<sup>3</sup> Although counsel asserts that the petitioner did not pursue the Form I-360 in a timely manner due to the depression she was suffering, the AAO notes that during this same time period the petitioner was able to initiate litigation against J-L-'s estate; resume her English classes; and work "diligently" as a volunteer at a local art gallery.

(3d Cir. 2005); *Pervais v. Gonzalez*, 405 F.3d 488, 490 (7<sup>th</sup> Cir. 2005). Yet, the Eleventh Circuit Court of Appeals has held that the filing deadlines for motions to reopen deportation and removal proceedings are mandatory and jurisdictional and consequently not subject to equitable tolling. *Abdi v. U.S. Atty Gen.*, 430 F.3d 1148, 1150 (11<sup>th</sup> Cir. 2005); *Anin v. Reno*, 188 F.3d 1273, 1278 (11<sup>th</sup> Cir. 1999). In addition, the Ninth Circuit Court of Appeals has held that the filing deadline for special rule cancellation under the Nicaraguan Adjustment and Central American Relief (NACARA) is a statute of repose not subject to equitable tolling, *Munoz v. Ashcroft*, 339 F.3d at 957, but has held that the time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling, *Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9<sup>th</sup> Cir. 2005).

Counsel provides no basis upon which to conclude that the two-year, post-legal termination filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act is a statute of limitations subject to equitable tolling (and not a statute of repose not subject to equitable tolling), and presents no argument as to why this portion of the Act is comparable to other immigration statutes that federal circuit courts have found subject to equitable tolling.

Counsel has failed to establish that this section of the Act is a statute of limitations subject to equitable tolling. Accordingly, the AAO concurs with the director's finding that the petitioner has failed to establish a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. The director, therefore, properly denied the petition on this ground.

### **Battery or Extreme Cruelty**

The second issue on appeal is whether the petitioner has establish that J-L- subjected her to battery or extreme cruelty. In her September 20, 2006 affidavit, the petitioner states that she met J-L- in August 2001 in a restaurant at which she was working, and that they began dating in June 2002. In late 2002, J-L- suggested that the petitioner leave her job as a waitress and find a better one. She states that J-L- offered her a job working for him, but that he first wanted her to improve her English language skills. As such, she left her job and began studying English at a local community college. J-L- supported her financially during this time. He proposed marriage in February 2003, and they were married in June 2003. The petitioner testifies that although J-L- was nice to her before the wedding, things changed afterward. The petitioner states that J-L- forbade her from studying; did not allow her to continue with her classes at the community college; and became very jealous and possessive. According to the petitioner, J-L- insisted on accompanying the petitioner everywhere: she could not go to a hair salon, to a store, or even pick up her children from school unless he came with her. Eventually, he forbade the petitioner from seeing her children unless he was present. The petitioner states that J-L- became very depressed and anxious in January and February 2004. He began seeing a psychologist, and took the petitioner along on two separate occasions so that she would not be home alone without him. Although the psychiatrist recommended that the petitioner also see a psychiatrist, J-L- refused, as he was afraid that her psychologist would tell her to leave him. The petitioner also testifies that after J-L- contracted herpes, he suspected that the petitioner had transmitted it to him. Although they went to a

physician, the physician explained to J-L- that, even if the petitioner had herpes, he would be unable to establish which of them had had it first. J-L- became even more jealous and possessive after their trip to the doctor and, for the next few weeks, he would not allow the petitioner to leave his side. According to the petitioner, during this time “all he wanted to do was sit on the sofa and stare out the window with me next to him.” On April 19, 2004, the petitioner found J-L- in the bathtub; he had shot himself. According to the petitioner, finding J-L-’s body caused her a great deal of pain and depression, and she was hospitalized from April 20 until April 22.

In her May 7, 2007 letter, [REDACTED] states that J-L- was jealous and refused to let the petitioner work, study, or spend time with her family and friends. She states that when she visited the petitioner, J-L- “was always there with us.” [REDACTED] states that, when she saw the petitioner, she seemed nervous, depressed, and frustrated. [REDACTED] states that J-L-’s suicide was devastating, and that the petitioner was shocked and depressed.

[REDACTED] the petitioner’s daughter, states that after J-L- killed himself, the petitioner “was crying all the time never stopping and saying why, why, why.” She states that she and [REDACTED] one of the petitioner’s friends, took her home and had to feed her, change her clothes, and try to calm her down. [REDACTED] states that she was unable to go to school for several days so that she could take care of her mother. She testifies that she was afraid the petitioner “might do something” to herself. She states that she had to field telephone calls from doctors, lawyers, detectives, and J-L-’s family which, as a sixteen-year-old, was very difficult. [REDACTED] states that the petitioner still sleeps with her on some nights, as she is now afraid to be alone, and that she has never fully recovered.

In her November 2, 2006 affidavit, [REDACTED] states that not having J-L- is hard on the petitioner, and that “what she went through” after J-L-’s death was devastating. In her June 13, 2007 affidavit, [REDACTED] describes the events that transpired after J-L-’s suicide. She states that she visited the petitioner at the hospital many times, and that during that time the petitioner, although sedated, was always crying and asking why J-L- had killed himself.

In his May 24, 2007 letter, [REDACTED] states that he treated the petitioner from April 2004 until September 2006. He states that the petitioner was diagnosed with post traumatic stress disorder (PTSD) and major depressive disorder. [REDACTED] states that these conditions “were a result of having found the dead body of your former husband.”

The medical documentation of record establishes that the petitioner spent several days in psychiatric treatment after J-L-’s April 19, 2004 suicide. The AAO notes further that the petitioner informed the emergency department at Greenwich Hospital on April 19, 2004 that J-L- was controlling and emotionally abusive.

In her June 21, 2007 letter, counsel stated that the evidence of record establishes clearly that J-L- emotionally abused the petitioner. She also stated that J-L-’s “cruellest act was the taking of his own life and the subsequent emotional trauma and severe depression it caused the petitioner.”

On the Form I-290B, counsel states that J-L- severely abused the petitioner, both verbally and emotionally, “on almost a daily basis.” She states that the petitioner was forced to seek psychiatric help based on that abuse and related depression. She also states that J-L- “ultimately committed the cruelest act against her in taking his own life.”

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to establish that J-L- subjected her to battery or extreme cruelty. First, there is no support in the record for counsel’s assertion on appeal that the petitioner was verbally abused. Although the testimony of record describes jealousy and social isolation, there is no testimony describing any verbal abuse to support counsel’s assertion. Nor does the record support counsel’s assertion that the petitioner was forced to seek psychiatric due to J-L-’s abuse and related depression. [REDACTED] specifically states that the petitioner’s depression and PTSD came about as a result of the petitioner finding J-L-’s body, and there is no indication that the petitioner sought psychiatric help before that time (beyond attending therapy sessions with J-L-).

The behavior of J-L- as described in the record does not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and the letters submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, or that J-L-’s non-physical behavior was accompanied by coercive actions or threats of harm. While the petitioner describes the possessive behavior of J-L-, her description of his actions, as well as the other descriptions of record, appear more related to his apparent mental illness rather than an attempt at insuring dominance or control over the petitioner. Absent testimony regarding specific instances of verbal, physical, or emotional abuse, the AAO finds that the petitioner has failed to establish that J-L- subjected her to either battery or extreme cruelty. Nor does J-L-’s act of suicide constitute abuse against the petitioner. The petitioner has failed to establish that J-L- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### **Good Moral Character**

Beyond the decision of the director, the AAO finds that the petitioner has failed to establish that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner’s good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in October 2003 and ending in October 2006).

The record contains a criminal background check issued by the State of Connecticut. However, the AAO finds that this document fails to satisfy 8 C.F.R. § 204.2(c)(2)(v). The AAO notes that this background check was conducted using the petitioner’s maiden name only. However, the

petitioner's social security card was issued using J-L-'s last name, and there is no indication that the person who ran this background check was aware that the petitioner had also been known by another name. Accordingly, this document is insufficient to establish the petitioner's good moral character. The petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. For this additional reason, the petition may not be approved.

### **Conclusion**

The AAO concurs with the director's determination that the petitioner has failed to demonstrate that she has a qualifying relationship with a United States citizen; that she is eligible for preference immigrant status on the basis of such a relationship; or that she was subjected to battery or extreme cruelty by her husband. Beyond the decision of the director, the AAO finds further that the petitioner has failed to establish that she is a person of good moral character. Accordingly, the AAO will not disturb the director's decision.

For all of these reasons, the petition may not be approved. 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

**ORDER:** The appeal is dismissed.