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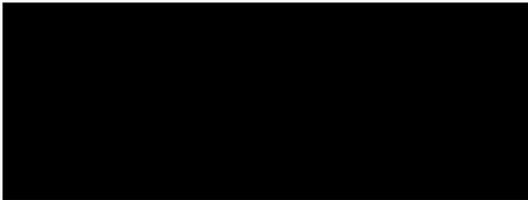
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



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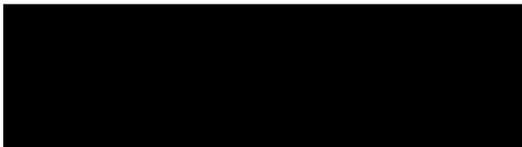
IN RE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“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.

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)(J) of the Act 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].

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, an alien who has divorced an abusive United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person who was a bona fide spouse of a United States citizen within the past 2 years and 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. See section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

On July 19, 2010, the director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. citizen spouse. The director also noted, but did not discuss, the insufficiency of the evidence in the record establishing that: the petitioner resided with the U.S. citizen spouse; had been subjected to battery or extreme cruelty by a U.S. citizen spouse; and is a person of good moral character. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief and the petitioner’s statement.

The eligibility requirements are explained 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 . . . 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 under section 204(a)(1)(A)(iii) of the Act are further explained 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.

* * *

(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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Philippines. She married B-S-¹ the claimed abusive United States citizen spouse, on November 11, 1998 in the Philippines. She entered the United States on May 11, 2004 on a K-3 visa. On October 26, 2005, a Dual Judgment of Divorce was issued terminating the marriage. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on February 2, 2010.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with B-S- as the marriage had been terminated more than two years prior to the petitioner's filing of the Form

¹ Name withheld to protect the individual's identity.

I-360.

Counsel asserts that the statute and regulation do not require that the petitioner file the Form I-360 within two years of the dissolution of the marriage, unless the reason for the divorce was due to battery or extreme cruelty. Counsel implies that the petitioner may file the Form I-360 at any time. Counsel also contends that the petitioner's belated filing of the Form I-360 is justified because in September 2006, when a Form I-140, Immigrant Petition for Alien Worker, filed on behalf of the petitioner was denied, the petitioner asked her attorneys if she could self-petition and was told she needed evidence of physical abuse to file a Form I-360 petition.

The petitioner, in her personal statement submitted on appeal, declares that she asked her attorneys in September 2006 whether she was eligible to file a self-petition and was told that she could not, even though she had told her attorneys of her former husband's maltreatment and extreme cruelty. The petitioner indicated that it was not until November 2009 that she learned for the first time that she was eligible to self-petition.

The language of the statute clearly states that an alien *who is the spouse of a United States citizen* may self-petition for immigrant classification. The language of the statute also clearly provides that to remain eligible for classification despite no longer being married to a United States citizen, an alien must have been the bona fide spouse of a United States citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 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). As previously observed, the petitioner in this matter was divorced from her spouse for more than two years at the time of filing the instant petition. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with her former spouse.

Upon review of the petitioner's implied claim that she received ineffective assistance of counsel, the petitioner has not met the criteria set out in *Matter of Lozada*, which requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The Ninth Circuit Court of Appeals, within whose jurisdiction this petition arose, has held that strict adherence to *Lozada* is not required when the record clearly shows the ineffective assistance of counsel. *See Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir. 2000) (deportation hearing transcript showed immigration judge's own confusion over alien's representation by counsel and alien equivocally answered immigration judge's question of whether she wanted counsel, whom had never met before, to represent her); *Castillo-Perez v. I.N.S.*, 212 F.3d 518, 526 (9th Cir. 2000) (record of proceedings documented prior counsel's failure to timely file alien's application for suspension of deportation); *Ontiveros-Lopez v. I.N.S.*, 213 F.3d 1121 (9th Cir. 1999)

(record showed that former counsel conceded alien's deportability, sought relief for which the alien was statutorily ineligible and that new counsel could not comply with [REDACTED] given his late receipt of the alien's file).

The petitioner has not established that her delay in filing was the result of ineffective assistance of counsel. The petitioner has not presented any detailed testimony concerning the contractual agreements she made with a prior attorney, or any other evidence to establish her prior attorney's ineffective representation. More importantly, even if the petitioner could demonstrate the ineffective assistance of her former counsel, there is no provision that would allow U.S. Citizenship and Immigration Services to waive the two-year limitation of section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act.

Eligibility for Immigrant Classification Based on the Qualifying Relationship

Beyond the decision of the director, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(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 relationship to the abusive spouse. Because the petitioner did not establish that she had a qualifying relationship as the spouse of a U.S. citizen at the time of filing the instant petition, she is also ineligible for immediate relative classification based on the former marriage.

Abuse

Although the director did not discuss this issue in his decision, the record also fails to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her former spouse. The petitioner's claim is based on her allegations that: her former husband blamed her for her miscarriage; that he was upset over the financial cost of the delivery of their child; he did not respect her mother; she was not consulted regarding the building of their house in the Philippines; in November 2003, when she and their child received their U.S. visas, B-S- did not send her money for plane tickets; when she arrived in the United States, after relatives helped her pay for the plane ticket, B-S- was not happy to see her; she had to care for his mother and B-S- told her that she could not call the Philippines; B-S- would not give her money to send to their child who remained in the Philippines; B-S- did not take her out; and at some point she realized that he did not want her so she joined her relatives in California. The petitioner also noted that she filed a Form I-485, Application to Register Permanent Residence or Adjust Status, but learned that B-S- had withdrawn the petition he had filed on her behalf so her Form I-485 was denied.

The petitioner also provided an August 12, 2009 psychological evaluation prepared by [REDACTED] who indicates that she interviewed the petitioner on July 7, 2009, almost four years subsequent to the petitioner's divorce. [REDACTED] references, in general, violence, severe abuse and years of insults, shouts, and demeaning comments perpetrated by B-S-, none

of which is discussed even generally in the petitioner's personal statement. [REDACTED] findings were based upon a single interview of unspecified length with the petitioner almost four years subsequent to her divorce. As such, her findings fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional which renders her findings speculative and diminish the probative value of her evaluation. Moreover, [REDACTED] does not provide substantive, probative information of specific incidents demonstrating B-S-s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

Upon review of the totality of the record, the petitioner has not provided probative evidence that she was subjected to battery or extreme cruelty. As described, B-S-'s actions do 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 evaluation 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, that her former spouse's non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The record is simply insufficient in this regard. For this additional reason, the petition will not be approved.

Good Moral Character

The petitioner in this matter has not provided evidence of her good moral character as required in the statute and regulation. For this additional reason, the petition will 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review 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. As always, the burden of proof in visa petition proceedings 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. The petition remains denied.