

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Bq



Date: **DEC 17 2012**

Office: VERMONT SERVICE CENTER File: 

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

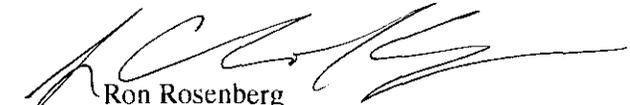
INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5.

Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. 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 Immigration and Nationality Act (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 for failure to establish that the petitioner had a qualifying relationship with a lawful permanent resident spouse and was eligible for preference immigrant classification based on such a relationship because the petition was filed more than two years after her divorce. The director further found that the petitioner did not establish that she entered the marriage with her former spouse in good faith.

On appeal, the petitioner asserts that the two-year filing period for the instant Form I-360 should be tolled because she has a previously filed Form I-360. The petitioner further asserts that the record contains sufficient evidence that she married her spouse in good faith.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) 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).

An alien who has divorced an abusive lawful permanent resident 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 lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), further states, in pertinent part:

In acting on petitions filed under . . . 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:

(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)(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:

(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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who married N-S¹, a lawful permanent resident of the United States, on April 19, 2001 in South Gate, California. On March 26, 2008, the petitioner and N-S dissolved their marriage in a divorce. The petitioner previously filed a Form I-360 on June 18, 2008. The petitioner's first Form I-360 was denied on October 5, 2009. The petitioner filed the instant Form I-360 on August 27, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's eligibility for immigrant classification and her entry into the marriage in good faith. The director then issued a Notice of Intent to Deny (NOID) based on the petitioner's failure to establish her entry into the marriage in good faith. The petitioner responded to the RFE and NOID with additional evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with N-S- because her marriage to N-S- was terminated on March 26, 2008 and the Form I-360 was not filed until August 27, 2010, more than two years later. The statutory language of the two-year, post-divorce filing deadline is clear; it prescribes no exceptions to the filing period and U.S. Citizenship and Immigration Services (USCIS) lacks the authority to waive the deadline as a matter of discretion. The statute explicitly states that to remain eligible for classification despite no longer being married to a lawful permanent resident, an alien must have been the bona fide spouse of a lawful permanent resident “within the past two years” and demonstrate a connection between the abuse and the legal termination of the marriage. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

On appeal, the petitioner asserts that she timely filed the prior Form I-360 petition on June 18, 2008 and did not have the means to appeal its denial. She states that the instant Form I-360 was filed within a reasonable period of time after the denial of her first Form I-360. The petitioner contends that the two-year filing deadline should be tolled from the date of the filing of the prior Form I-360 petition for humanitarian reasons. Federal courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation. However, the petitioner cites no binding case finding visa petition filing deadlines subject to equitable tolling. *Compare Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005) (time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) *with Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). The two-year, post-divorce filing period of section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive this statutory deadline.

The petitioner further asserts that in the alternative, the director should have waived the time limit for filing a motion to reopen her prior Form I-360 petition and treated the instant Form I-360 as a motion to reopen pursuant to section 240(c)(7)(C)(iv)(III) of the Act, 8 U.S.C. § 1229a(c)(7)(C)(iv)(III). The petitioner is misguided. First, the petitioner did not file a motion to reopen; she filed a second Form I-360. Second, the waiver of time limitations under section 240(c)(7)(C)(iv)(III) of the Act only applies to motions to reopen removal, deportation or exclusion proceedings in immigration court; not affirmative Form I-360 petitions before U.S. Citizenship and Immigration Services (USCIS). The filing deadline may be excused for motions to reopen in the discretion of USCIS only “where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” 8 C.F.R. § 103.5(a)(1)(i). Even if the petitioner made the requisite demonstration, the AAO has no jurisdiction over a motion to reopen the prior Form I-360. The official having jurisdiction over a motion is the official who made the last decision on the petition, in this case the Director of the Vermont Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The petitioner failed to file the petition within two years of the legal termination of her marriage to N-S-, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act. The petitioner, therefore,

has not established that she had a qualifying relationship with a lawful permanent resident of the United States and was eligible for preference immigrant classification based on such a relationship. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii).

Entry into the Marriage in Good Faith

The director concluded that the petitioner did not establish that she entered into the marriage with N-S- in good faith, but did not fully discuss the basis for his determination. The director briefly noted that the petitioner failed to provide documentation from a friend or neighbor with knowledge of the marital relationship. On appeal, the petitioner asserts that she submitted five declarations from friends who have knowledge of her good-faith entry into the marriage. The petitioner contends that the director's decision finding that the declarations were insufficient violates the "any credible evidence" standard.

When determining whether or not a petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

De novo review shows that the evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In response to the RFE, the petitioner submitted a rental agreement she signed with N-S- and fifteen undated photographs of herself and N-S- taken at unspecified locations. In response to the NOID, the petitioner submitted an affidavit in which she stated that she does not have additional documents from her marriage because N-S- was very controlling and would not allow her to have a joint account with him. The petitioner failed to describe how she met her former husband, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

On appeal, the petitioner submitted letters from her sister, [REDACTED] and her friends [REDACTED]. These individuals briefly discussed knowing of the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. The petitioner also provided a personal statement in which she briefly recalled that she and N-S- were married by notary public in South Gate, California and resided together for six years. She stated that they had a "good marriage for the first 6 months and after that he started to change." The petitioner did not further describe how she met her former husband, their courtship, wedding ceremony, joint residence or any of their shared experiences. Although the petitioner submitted photographs and a rental agreement, they are not alone probative evidence of her good-faith entry into the marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish the existence of a qualifying relationship with a lawful permanent resident, her eligibility for preference immigrant classification based upon that relationship, and her good-faith entry into marriage with her former husband. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.