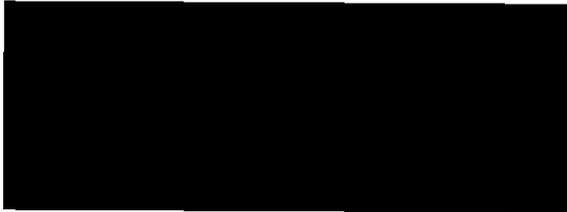


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Bq

DATE: **DEC 17 2012** OFFICE: VERMONT SERVICE CENTER

FILE:



IN RE: Self-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:

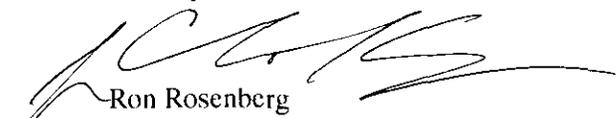


INSTRUCTIONS:

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 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 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 request 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 that any motion must 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 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 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 as the spouse of a lawful permanent resident (LPR) and that she was eligible for immigrant classification based upon that relationship. On appeal, counsel submits a brief and additional evidence.

Applicable Law

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) states, in pertinent part, the following:

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 evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) 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 filed by a spouse must be accompanied by . . . 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

Facts and Procedural History

The petitioner is a native and citizen of India. She was admitted to the United States as a nonimmigrant worker (H1-B) on March 19, 2009. Prior to her entry into the United States, the petitioner had married D-C-,¹ a native and citizen of India, on October 19, 2004, in India. The petitioner and D-C- were divorced on January 9, 2009. In May 2009, D-C- became a lawful permanent resident of the United States. On September 21, 2010, the petitioner filed the instant Form I-360. On July 8, 2011, the director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the evidence submitted on appeal do not overcome the director's determination that the petitioner did not have a qualifying relationship as the spouse of a lawful permanent resident and was not eligible for immigrant classification based upon that relationship. Thus, the appeal will be dismissed.

Qualifying Relationship

The plain language of section 204(a)(1)(B)(ii) of the Act requires that the petitioner's abuser be a lawful permanent resident (LPR) at the time of the qualifying relationship. Here, the petitioner's ex-husband was not a lawful permanent resident at the time of their marriage and his abuse, as her ex-husband did not obtain his LPR status until after their divorce. The petitioner does not meet the requirements for a qualifying relationship at section 204(a)(1)(B)(ii)(II)(aa) of the Act as she is not the spouse of an LPR, is not someone who believed she had married an LPR, nor was she the spouse of an LPR who within the past two years lost his status or that she divorced as a result of the LPR spouse's battery or extreme cruelty.

The history of the amendments to the Violence Against Women Act further shows that a petitioner's abuser must be or must have been a citizen or a lawful permanent resident at the time of the qualifying relationship. Upon their enactment in 1994, the self-petitioning provisions required marriage to the abusive U.S. citizen or lawful permanent resident at the time of filing. Pub. L. No. 103-322, § 40701 (1994) (codified at 8 U.S.C. § 1154(a)(1)(A) (1995)). Consequently, the words "who is the spouse of an alien lawfully admitted for permanent residence" clearly required that the spouse be a lawful permanent resident at the time of the qualifying marriage has ended. The 2000 amendments to the self-petitioning provisions further show that the statute does not encompass a situation where the spouse becomes a lawful permanent resident after the qualifying marriage has ended. The Battered Immigrant Women Protection Act of 2000, Title V of the Victims of Trafficking and Violence Protection Act of 2000 (VAWA 2000), amended section 204(a)(1) of the

¹ Name withheld to protect individual's identity.

Act to extend eligibility to, *inter alia*: aliens whose marriage was invalid due to the abuser's bigamy, aliens who had divorced the abuser within the past two years if the divorce was connected to the abuse and aliens whose abuser had lost permanent resident status or lost or renounced citizenship within the past two years related to an incident of domestic violence. Pub. L. No. 106-386, § 1503(b), (c) (Oct. 28, 2000) (codified at 8 U.S.C. § 1154(a)(1)(A)(iii), (a)(1)(B)(ii)). While expanding the definition of a qualifying relationship, VAWA 2000 did not alter the requirement that the spouse have citizenship or lawful permanent resident status during that relationship.

On appeal, counsel asserts that a conditional permanent resident is an alien who has been lawfully admitted for permanent residence. Counsel is correct that the petitioner's ex-husband is now an LPR, regardless of whether his conditional residence card has expired, and insofar as the director stated otherwise, that portion of his decision is withdrawn. However, the petitioner still has not established a qualifying relationship with a lawful permanent resident as her former husband obtained LPR status after their divorce was finalized. The new evidence on appeal relates to the petitioner's request for a fee waiver and does not support her position that she had a qualifying relationship with her ex-husband. The claims and evidence submitted on appeal are insufficient to overcome the director's determination that the petitioner did not have a qualifying relationship with D-C- and that she was ineligible for preference immigrant classification based on such a relationship, as required by subsections 204(a)(1)(B)(II)(aa) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not established that she had a qualifying relationship with her former husband and was eligible for preference immigrant classification based on that relationship. 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). The petitioner has not met that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.