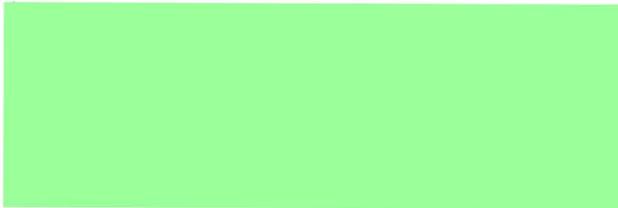


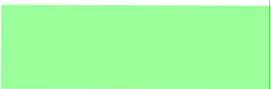


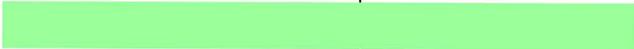
U.S. Citizenship
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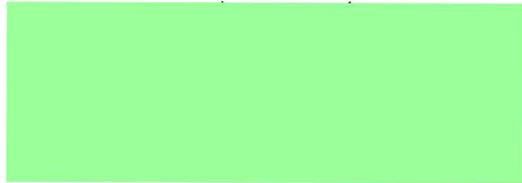
Date: FEB 04 2013

Office: VERMONT SERVICE CENTER File: 

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:

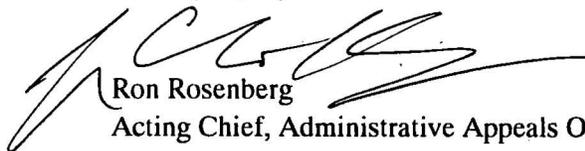


INSTRUCTIONS:

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 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, denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain 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.

Applicable Law

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). An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien "was a bona fide spouse of a United States citizen within the past two years and . . . demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the United States citizen spouse." Section 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).

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].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered 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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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 standard and 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:

(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 evidence of citizenship of the United States citizen or 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 . . .

* * *

(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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Peru who entered the United States as a nonimmigrant visitor on October 5, 2004. On July 27, 2007, she married a U.S. citizen. The petitioner and her former husband divorced on March 10, 2009. The petitioner filed the instant Form I-360 on July 6, 2010. The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification based on such a relationship; that the petitioner entered into her marriage in good faith; and the requisite battery or extreme cruelty. The AAO summarily dismissed the petitioner's subsequent appeal.

On the Form I-290B, Notice of Motion, counsel asserts that he believes U.S. Citizenship and Immigration Services (USCIS) did not properly consider all of the evidence provided. However, counsel cites no binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or USCIS policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Counsel also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. See 8 C.F.R. § 103.5(a)(3) (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. See 8 C.F.R. § 103.5(a)(4).

Counsel's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel asserts that the petitioner's former husband subjected her to abuse during their marriage and that USCIS did not properly assess the psychological evaluation submitted below.

On motion, counsel submits a letter from the [redacted] Hospital, two statements from the petitioner's friends and medical records.

Analysis

Qualifying Relationship

The petitioner has failed to demonstrate that she had a qualifying relationship with a U.S. citizen and that she is eligible for immigrant relative classification based on such a qualifying relationship. On her Form I-360 and in her declaration, the petitioner indicated that she was previously married. In the request for evidence (RFE), the director requested proof that the petitioner's previous marriage was terminated prior to her marriage to her U.S. citizen husband. The petitioner did not provide any evidence that her previous marriage was terminated prior to her marriage to her U.S. citizen husband, and also failed to address this issue on appeal. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires proof of the termination of the self-petitioner's prior marriage. The petitioner has not submitted any evidence of the legal termination of her prior marriage. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa) of the Act.

Furthermore, as the petitioner has failed to establish the requisite battery or extreme cruelty, as

explained below, she has also failed to demonstrate any connection between her divorce from her second husband and such battery or extreme cruelty. For this additional reason, the petitioner failed to show that she had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(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 qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that she had a qualifying relationship with her U.S. citizen husband. She consequently has also failed to establish that she is eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her first declaration, the petitioner stated that she met her former husband at the [REDACTED] Casino and that they were always together and he treated her well. She briefly recounted that they talked about what they had in common and liked things about each other, so after one year of getting to know each other better they got married. She reported that they were married on July 27, 2007, close to Peru's Independence Day, and that the first three months of marriage were very good until the petitioner's former husband's father died. In response to the RFE, the petitioner submitted a second declaration in which she stated that after their marriage, she and her children went to live in her former husband's house and that all the bills were in his name. The petitioner did not further describe how she met her ex-husband, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

The director accurately assessed the relevant documents submitted below. The petitioner initially submitted copies of her and her children's insurance cards and medical documents showing that they were included in her former husband's insurance plan. As noted by the director, this only shows the petitioner's former husband's intent in entering into the marriage, not the petitioner's. The petitioner submitted five statements from friends who briefly stated that they were aware that the petitioner was married, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. In their statements, the authors did not provide any substantive information regarding their observations of the petitioner's interactions and relationship with her ex-husband prior to and during their marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her former husband in good faith. The photographs of the petitioner with her ex-husband on a few unspecified occasions are not accompanied by any explanation of their significance.

On motion, counsel fails to address the director's determination that the petitioner did not enter into her marriage in good faith. Counsel submits two updated statements from [REDACTED].

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states that the petitioner married her former husband, but does not explain the basis for her knowledge. recalls that she attended the petitioner's wedding to her former husband and that she seemed happy for a short while after the wedding but that her mood soon changed. Again, neither statement provides any substantive information regarding the authors' observations of the petitioner's interactions and relationship with her ex-husband prior to and during their marriage. A full review of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner failed to show that her ex-husband subjected her to battery or extreme cruelty and the additional evidence submitted on motion fails to overcome this ground for denial. In her first declaration, the petitioner stated that her former husband verbally abused her by putting her down and insulting her. The petitioner recounted that her ex-husband was physically violent, and would force her to sleep with him. She recalled that he also threatened her and her children "with the police and with immigration." The petitioner stated that her former husband told her to borrow money from a friend but that he took all of the money and he did not put her name on the bank account. She recalled that her ex-husband told her and her children to leave the house. She later learned that he was having an affair with her childhood friend. In her second declaration, the petitioner added that her ex-husband said things to her that made her feel like she was nothing and that he would spend money on unnecessary things and then ask her for money. The petitioner's brief description of her former husband's battery lacks probative details. The petitioner also does not sufficiently describe behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) in probative detail.

The petitioner's friends attested to her troubled marriage, but their statements also fail to demonstrate that the petitioner's ex-husband subjected her to battery or extreme cruelty. The petitioner's friends asserted that she came to work crying and that her husband yelled at her and spent her money. On motion, adds that the petitioner and her former husband had a lot of marital problems and that he made her feel unworthy of having friends. In her updated statement, states that the petitioner's former husband was verbally abusive, came home late, was mean to the petitioner and constantly borrowed money from her. Neither of these statements describes any specific incidents of abuse or any behavior that rises to the level of extreme cruelty.

The petitioner also submitted a psychological evaluation written by a licensed clinical therapist, who determined that the petitioner was experiencing symptoms of post-traumatic stress disorder (PTSD) and acute stress disorder. The therapist indicated that the petitioner reported that her ex-husband abused her verbally, physically, financially and sexually. She also stated that the petitioner's relationship included control and isolation. The evaluation repeats many of the petitioner's claims but does not add sufficient substantive information or refer to any specific incidents that would show that the petitioner's husband battered her or her children or that his actions

constituted extreme cruelty against them. The director correctly determined that the relevant evidence submitted below did not establish the requisite battery or extreme cruelty.

On motion, counsel submits a letter from [REDACTED] Hospital, who states that the petitioner was suffering from severe anxiety/depression and migraine headaches and that he feels that this was related to the difficult marriage that she was involved in. [REDACTED] does not state the basis for his knowledge, nor does he describe any battery or abuse. Similarly, the medical records submitted on motion show that the petitioner was admitted to the emergency room for migraine headaches and other pains, but do not establish a connection between her medical conditions and any alleged abuse. Counsel asserts that USCIS failed to appropriately weigh the petitioner's medical and psychological evidence, but fails to articulate how the relevant evidence demonstrates that the petitioner's husband subjected her to battery or extreme cruelty.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). In this case, the affidavits of the petitioner and her friends do not describe in probative detail any incidents of battery or any behavior that involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The medical and psychological evidence establishes that the petitioner suffered from mental health issues that may have resulted from her marriage to her former husband, but do not show that the petitioner's former husband battered her or subjected her to extreme cruelty. Accordingly, the petitioner has not established that her former husband subjected her or any of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

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. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

ORDER: The appeal remains dismissed and the petition remains denied.