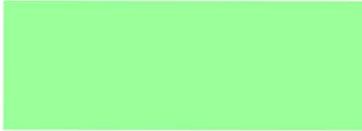


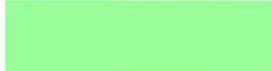
(b)(6)



U.S. Citizenship
and Immigration
Services



Date: **AUG 18 2014**

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director, (the 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 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 her U.S. citizen spouse.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and eligibility for immediate relative classification based on this relationship.

On appeal, the petitioner submits additional evidence.

Relevant Law and Regulations

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 further 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 for a self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (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:
 - (A) Is the spouse of a citizen. . . .
 - (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].

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . 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

Pertinent Facts and Procedural History

The petitioner, a citizen of Mexico, entered the United States on December 11, 2011, as a nonimmigrant visitor. The petitioner married L-L¹, a U.S. citizen, on January 23, 2012, in [REDACTED] County, Iowa. The petitioner filed the instant Form I-360 on June 4, 2012. The director subsequently issued a Request for Evidence (RFE) of evidence that the petitioner terminated her prior marriage before marrying L-L-. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner's claims and the new evidence submitted on appeal fail to overcome the grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act the petitioner must submit evidence of the marital relationship, including proof of the termination of all prior marriages, and evidence of the citizenship of the U.S. citizen spouse. On the Form I-360, the petitioner indicated that including her marriage to L-L-, she has been married twice. In response to the RFE, the petitioner submitted several letters explaining her abusive relationship with her prior spouse, T-F-². She explained that in 1999, the petitioner and T-F- obtained a document in France stating that they were domestic partners but that this information was not updated in the French civil registry. She stated that after T-F- abandoned her and her daughter in February of 2009, she was told that T-F- had obtained a divorce and later died but that she is unaware of where he filed for divorce or his location when he died. The petitioner did not provide any substantive details about how she learned of her claimed divorce from T-F- his death, nor did she state the dates of when either of these events occurred. The petitioner further stated that upon hearing of her divorce from T-F-, her employer at the time removed T-F- as a beneficiary from the petitioner's employment-based health insurance. The petitioner explained that it is impossible for her to obtain a divorce or a

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

death certificate but that her relationship with T-F- has been over since February of 2009.

On appeal, the petitioner submits another personal letter and resubmits her previous letters. She states that due to special circumstances, she is unable to obtain the requested documents regarding her previous marriage but reasserts that she is legally married to L-L-. She further states that she attempted to contact the French embassy and the French consulate by electronic mail but that she did not receive a response. Additionally, the petitioner explains that it is impossible for her to inquire in person but that an acquaintance of hers went to a French embassy and was told that unless she was the petitioner's lawyer, they could not give her any information. The petitioner states that her friend was also told by officials at the French embassy that they would need to know detailed information about when and where the divorce took place. In addition, the petitioner would have to pay a fee and that there was no guarantee that they would find the record of the petitioner's divorce from T-F-. The petitioner does not submit any evidence of this encounter nor of her own personal efforts in obtaining the required documents.

Upon a full review of the record, including the additional evidence submitted on appeal, we find that the petitioner has not submitted sufficient credible evidence to demonstrate that her prior marriage to T-F- was terminated. As the petitioner is unable to demonstrate that she was legally free to marry L-L- on January 23, 2012, she has not established that she has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon this relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen or is eligible for immediate relative classification based on this relationship. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.