

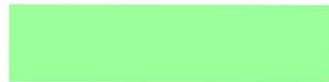


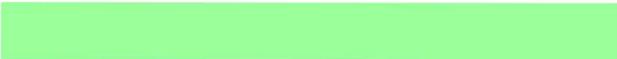
U.S. Citizenship
and Immigration
Services

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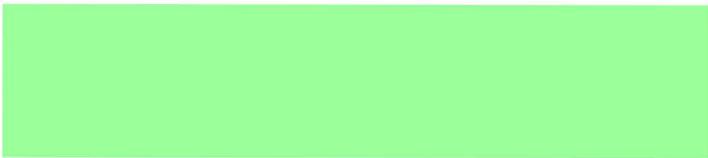
Date: **JAN 31 2014** Office: VERMONT SERVICE CENTER



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 (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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“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 claimed United States citizen spouse.

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

On appeal, the petitioner, through counsel, submits a brief.

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 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 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

Pertinent Facts and Procedural History

The petitioner, a citizen of Venezuela, entered the United States on January 20, 2000 as a B-2 visitor. She claims she entered into a common law marriage with G-B-¹, a citizen of the United States, in Houston, Texas after the two were engaged in January of 2000. The two ended their relationship when the petitioner left G-B- in May of 2000. The petitioner filed the instant Form I-360 on September 9, 2011. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's marriage to G-B-. The petitioner, through counsel, submitted additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel asserts that the petitioner provided sufficient evidence to establish her common law marriage with G-B-, qualifying relationship as the former spouse of a U.S. citizen, and her corresponding eligibility for immediate relative classification.

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 fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's grounds for denial and 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 evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner 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.

The petitioner initially submitted a personal affidavit, an incomplete Texas marriage license, a receipt for an engagement ring, paternity test results sowing G-B- as the father of her child, and a child support order. In her affidavit, the petitioner stated that she first met G-B- on the internet and met in person when he travelled to Venezuela for work. She stated that when she came to the United States to visit G-B- on January 20, 2000, the relationship progressed and to her surprise, G-B- proposed marriage. The petitioner then stated that the two intended to start a family right away and considered themselves to be married from the date of the marriage proposal. The petitioner further recounted that although they obtained a marriage license, they postponed their formal wedding because G-B- unexpectedly had to travel for work for two weeks at that time. She stated that when he returned from his trip, he asked for money for a down payment for a house but did not include her name on the title. Because of this, their relationship started to deteriorate which led to her departure from the relationship in May of 2000. In response to the RFE, the petitioner resubmitted her affidavit and the paternity test results for her daughter. She also submitted her daughter's birth certificate and letters from G-B-, [REDACTED]

¹ Name withheld to protect the individual's identity.

In denying the petition, the director correctly found that the submitted letters did not demonstrate that the petitioner and G-B- were married because they proved only that the petitioner and G-B- were involved and intended to get married, not that they held themselves out as married. Under the law in Texas, an “informal marriage,” also known as a common law marriage, is formed when a man and a woman mutually agree to be married, live in the state of Texas as a married couple, and represent to others that they are married. See TEX. FAM CODE ANN. § 2.401 (West 2012); see also *Matter of C*, 1 I.&N. Dec. 301, 302 (BIA 1942); *Matter of Garcia*, 16 I.&N. Dec. 623 (BIA 1978). Evidence of a couple holding themselves out as husband and wife may include, but is not limited to, testimony of either or both parties and their family and friends, copies of tax returns filed jointly as a married couple, leases signed as husband and wife, and insurance policies listing one person as the other person’s spouse.

In the instant case, the petitioner’s friends and family all attested to knowing the petitioner and G-B- as a couple intending to get married who lived together as husband and wife. They did not state that the two held themselves out to be married nor describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. Further, counsel states that though the petitioner left G-B- in May of 2000 due to the constant abuse, she did not seek a divorce or termination of the relationship because legally there would be nothing to terminate. However, as held by the Texas Supreme Court, a common law marriage, once established, may only be terminated by death or a court decree. See *Estate of Claveria v. Claveria*, 615 S.W.2d 164, 167 (Tex. Feb 11, 1981). The petitioner has not submitted any evidence that the relationship was terminated by a court decree.

On appeal, counsel also argues that the director’s decision is internally inconsistent. She states that it is a contradiction for the director to find that the petitioner demonstrated the requisite battery or extreme cruelty and good-faith entry into the marriage without also having establishing a qualifying relationship with a U.S. citizen. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other. To the extent that the director’s decision implied that the petitioner established that she entered into the qualifying relationship in good faith, that portion of the decision is withdrawn as the preponderance of the evidence does not demonstrate that the petitioner and G-B- were married.² Counsel’s assertion on appeal that the evidence below demonstrates that the petitioner and G-B- presented to others as husband and wife is not supported by the record. Accordingly, the petitioner has not established that she had a qualifying relationship as

² 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).

Page 5

the spouse of a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

Conclusion

On appeal, the petitioner has failed to establish a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.