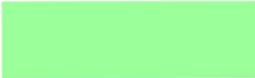


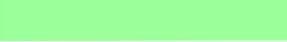


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 06 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Self-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:

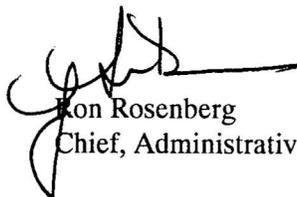


INSTRUCTIONS:

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 and the petition will remain denied.

The petitioner seeks immigrant classification under 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 spouse.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her ex-husband subjected her to battery or extreme cruelty during their marriage, and that as a result she failed to establish a connection between her divorce and said battery or extreme cruelty. On appeal, counsel submits a brief.

Applicable Law

Section 204(a)(1)(A)(iii)(I) 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 an abusive United States citizen 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 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 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by 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.

* * *

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.

* * *

(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.

* * *

Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on August 5, 2008, as a B2 nonimmigrant visitor. The petitioner married her U.S. citizen former husband on November 2, 2011, in Colorado. The petitioner divorced her ex-husband on February 26, 2013. The petitioner filed the instant Form I-360 self-petition on April 15, 2013. The director subsequently issued a request for additional evidence (RFE) of her ex-husband's battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty, and that the divorce resulted from said battery or extreme cruelty. On appeal, counsel submits a brief in which she asserts that the petitioner submitted sufficient evidence to show that she was abused and that the director abused his discretion by failing to meaningfully consider the evidence submitted.

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. On appeal, the petitioner has failed to establish that she was subjected to battery or extreme cruelty by her ex-husband during their marriage.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former husband did not subject her to battery or extreme cruelty and counsel's assertions on appeal fail to overcome this ground for denial. In her affidavit, the petitioner stated that on one occasion her husband grabbed her chin and shook it back and forth when she had a toothache. She described how her former husband cheated on her, screamed at her, and withheld money for groceries. She stated that her former husband threatened not to complete her immigration papers and said he could have her deported back to Ghana. The petitioner's description of battery lacks probative details, and the other behavior she describes is not comparable to the acts described as extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted a statement from [REDACTED] who indicated that the petitioner's ex-husband put another woman on their telephone account, had an affair, and wouldn't complete the petitioner's immigration papers. Mr. [REDACTED] did not provide any probative descriptions of any particular incident of battery or extreme cruelty.

The petitioner submitted a psychological evaluation prepared by [REDACTED] a licensed clinical psychologist. Ms. [REDACTED] indicated that the petitioner's ex-husband threatened not to attend her immigration interview and emotionally abused her by having an affair, making disparaging remarks and ridiculing her, and not providing her with money or groceries, but made no mention of any incidents of battery. Ms. [REDACTED] diagnosed the petitioner with major depressive disorder. Ms. [REDACTED] report does not offer any probative descriptions of any particular incidents or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). There is no indication that the petitioner's former husband's non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence.

The petitioner's statements and the other relevant evidence do not indicate that her former husband's behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). When considered in the aggregate, the relevant evidence also fails to establish that the petitioner's former husband subjected her to battery during their marriage. The petitioner recounted that on one occasion her former husband shook her by the chin, but she failed to provide a probative description of this event or show that the incident resulted or threatened to result in physical or mental injury, as the petitioner stated that her bottom front tooth was bothering her before her husband grabbed her. See 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not establish that any other acts were part of an overall pattern of violence. *Id.*

On appeal, counsel contends that manipulative acts can constitute abuse, and sites to *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003). As this case arose outside of the Ninth Circuit, *Hernandez*

is not a binding precedent. Even if we were to defer to *Hernandez* as persuasive authority in this case, the facts constituting extreme cruelty in *Hernandez* are in no way analogous to the actions of the petitioner's ex-husband as described in the record. The plaintiff in *Hernandez* was subject to years of her abusive spouse's cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, as well as enduring constant verbal abuse, periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *Hernandez v. Ashcroft*, 345 F.3d at 829-32, 840-41. The *Hernandez* court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.'" 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840. In this case, the record does not demonstrate that the petitioner's former husband's insults, affair, and lack of provision of money or food, were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

Counsel also asserts that the director abused his discretion by failing to meaningfully consider the psychological evaluation. Here, although the director failed to fully explain his reasoning, the director considered all the relevant evidence submitted by the petitioner below, including the psychological evaluation. We have reviewed all the evidence, including the psychological evaluation, and as stated above, the relevant evidence is insufficient to meet the petitioner's burden of proof that her former husband subjected her to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The psychological evaluation does not mention the petitioner's former husband grabbing her chin or any other incident of battery. The other acts the social worker describes are not comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) as extreme cruelty. Accordingly, the petitioner has not established by a preponderance of the evidence that her ex-husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship

Beyond the director's decision,¹ the petitioner has failed to demonstrate that she had a qualifying relationship with a U.S. citizen and that she is eligible for immediate relative classification based on such a qualifying relationship. The petitioner and her ex-husband are divorced, and as the petitioner failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty.

Furthermore, the petitioner indicated that she was married once before in Ghana, and that marriage ended with divorce on October 10, 2010. However, as evidence of this divorce, the petitioner

¹ 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).

submitted a Statutory Declaration of Divorce signed by the petitioner and her first husband's fathers. In *Matter of Kodwo*, 24 I&N Dec. 479 (BIA 2008), the Board of Immigration Appeals (the Board) held that while a court order is the preferred method of establishing the dissolution of a customary tribal marriage under Ghanaian law, affidavits executed by the heads of households that meet specified evidentiary requirements may be sufficient to establish a divorce for immigration purposes. Current information provided by the U.S. Department of State indicates that the desirable proper documentation of a customary divorce continues to be a court decree. The declaration of the two fathers does not contain the time of divorce, as discussed in *Kodwo*, and the petitioner has not submitted a divorce decree.² As such, the petitioner has not demonstrated that she was free to marry her U.S. citizen former husband on November 2, 2011. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with her second husband and was eligible for immediate relative classification based on their relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not established that her former husband subjected her to battery or extreme cruelty during their marriage. Beyond the director's decision, the petitioner has failed to demonstrate that she had a qualifying relationship with a U.S. citizen and that she is eligible for immediate relative classification based on such a qualifying 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. 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.

ORDER: The appeal is dismissed.

² The Visa Reciprocity information at <http://travel.state.gov/content/visas/english/fees/reciprocity-by-country.html>, provides in relation to Ghana:

Certificates for the dissolution of a civil marriage may be obtained from the court that granted the divorce. Proper documentation of the dissolution of a customary marriage is a decree, issued by a high court, circuit court or district court under the Matrimonial Causes Act of 1971 (Act 367), Section 41(2), stating that the marriage in question was dissolved in accordance with customary law. Affidavits or "statutory declarations" attesting to a divorce under customary law, even when duly sworn, do not constitute proper documentation of the dissolution of a Ghanaian customary marriage.