

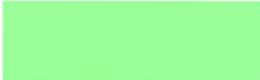


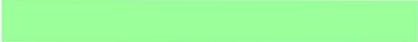
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 29 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 Vermont Service Center 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 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.

The director denied the petition based on the petitioner's failure to establish that she has a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based on this qualifying relationship, that she was battered or subjected to extreme cruelty by her former husband, and that she entered into the marriage with him in good faith.

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

Relevant Law and Regulations

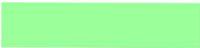
Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, 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 U.S. 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 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)(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:



* * *

(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].

* * *

(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. . . .

* * *

(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 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, 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, a citizen of Peru, entered the United States on November 16, 2000 as a nonimmigrant visitor. The petitioner and her first husband divorced on August [REDACTED] in [REDACTED] California. The petitioner married V-R-¹, a U.S. citizen, on March [REDACTED] V-R- divorced the petitioner in [REDACTED] California on November [REDACTED]. The petitioner filed her first Form I-360 self-petition on November 19, 2008 based on her marriage to V-R-. The director denied the petition on June 9, 2010 based on the petitioner's failure to establish that she had been battered or subjected to extreme cruelty by V-R-, that she entered into her marriage with V-R- in good faith, and that she was a person of good moral character. The petitioner filed the instant Form I-360 petition on October 3, 2011, more than two years after her divorce from V-R-. The director denied the petition on February 11, 2013 primarily on the ground that the petitioner's divorce rendered her unable to establish that she has a qualifying relationship with a U.S. citizen spouse and is eligible for immediate relative classification based on that relationship. The director further noted the petitioner's ineligibility under section 204(a)(1)(A)(iii) of the Act because she failed to demonstrate that V-R- subjected her to battery or extreme cruelty, and that she married V-R- in good faith.

The petitioner, through counsel, subsequently appealed the director's decision. The appeal consists of a Form 1-290B, Notice of Appeal, and a brief.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Eligibility for Immigrant Classification

To establish eligibility under section 204(a)(1)(A)(iii) of the Act, the petitioner must show that she has a qualifying relationship with a U.S. citizen, and that she is eligible to be classified as an immediate relative of that person under section 201(b)(2)(A)(i) of the Act. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II). In the instant matter, the petitioner seeks to establish a qualifying

¹ Name withheld to protect the individual's identity.

relationship by demonstrating that she was "a bona fide spouse of a United States citizen *within the past 2 years and . . . who 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) (emphasis added). Here, the petitioner submitted a Judgment from the [REDACTED] Superior Court indicating that the petitioner's marriage to V-R- was legally terminated on November [REDACTED], almost five years before the petitioner filed the instant self-petition on October 3, 2011. As the petitioner was not married to V-R- within two years of filing the instant self-petition, she cannot demonstrate a qualifying relationship to him. She is therefore also ineligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act. Consequently, the director did not err in finding the petitioner ineligible for the benefit sought based on these two grounds.

On appeal, counsel asserts that the petitioner preserved eligibility for relief under section 204(a)(1)(A)(iii) of the Act by filing her first Form I-360 self-petition within two years of her divorce from V-R-, but cites no authority for this proposition. While the regulation at 8 C.F.R § 204.2(h)(2) allows a successful self-petitioner to transfer the priority date of a previously filed Form I-130 filed by the abuser to an approved Form I-360 self-petition, there is no statute or regulation that allows a self-petitioner to preserve eligibility under section 204(a)(1)(A)(iii) of the Act through a previously filed Form I-360. In his appeal brief, counsel characterizes the two-year provision at section 204(a)(1)(A)(iii)(II)(CC) of the Act as "arbitrary"; however, this provision was mandated by Congress and we have no authority to waive the requirements of the statute. In addition, the statute is not subject to equitable tolling as counsel suggests.

Counsel also requests prosecutorial discretion pursuant to a memorandum authored by John Morton, the former Director of U.S. Immigration and Customs Enforcement (USICE), outlining factors for consideration by ICE employees in making discretionary enforcement decisions. *See* Memorandum from John Morton, Director, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, Policy Number 10075.1, FEA Number 306-112-0026 (June 17, 2011). U.S. Citizenship and Immigration Services (USCIS) grants immigration benefits pursuant to the authority delegated to it by the Department of Homeland Security. The instant proceedings are before the Administrative Appeals Office, a component within USCIS, not USICE. Thus, the cited memo regarding prosecutorial discretion is not relevant to the instant proceedings.

The director correctly determined that the petitioner no longer has a qualifying relationship with V-R- because she divorced him over two years before she filed the instant self-petition. On appeal, the petitioner has not provided any additional evidence to demonstrate the existence of a qualifying relationship. Accordingly, the petitioner has not established that she has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

The Director's Other Grounds for Denial

The director also determined without analysis that the petitioner did not establish that she was battered or subjected to extreme cruelty by her former spouse, or that she married him in good faith.

The petitioner has not submitted any additional evidence or otherwise addressed these grounds for denial on appeal. However, as the petitioner has failed to establish that she has a qualifying relationship as spouse of a U.S. citizen and her eligibility for immediate relative classification based on that relationship, we will not further address these issues.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner has a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based on this qualifying relationship. The petitioner is therefore 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.