



U.S. Citizenship
and Immigration
Services

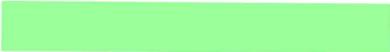
(b)(6)



Date: **SEP 18 2014**

Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

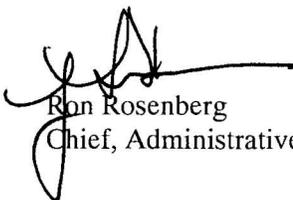


INSTRUCTIONS:

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 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 under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien spouse battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish a qualifying relationship and eligibility for immigrant classification based on this qualifying relationship. On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II). An alien who has divorced an abusive lawful permanent resident 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 lawful permanent resident spouse." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

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 clause (ii) or (iii) of subparagraph (B) 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)(B)(ii) of the Act are explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

- (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 . . . 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

Pertinent Facts and Procedural History

The petitioner is a citizen of Venezuela who married V-L-¹, a national of Cuba and lawful permanent resident of the United States, on November 29, 2003, in [REDACTED] Florida. The two were divorced on December 22, 2010, and V-L- later died on August 7, 2011. The petitioner filed the instant Form I-360 on July 3, 2012. The director denied the petition and the petitioner, through counsel, timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims on appeal have not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

The director correctly determined that the record below failed to demonstrate that the petitioner had a qualifying relationship with a United States citizen or lawful permanent resident and was eligible for a corresponding immigrant classification. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act allows the spouse of a U.S. citizen to file a self-petition within two years of the death of the abusive spouse. There is no corresponding provision for spouses of lawful permanent residents of the United States. The petitioner married V-L-, a lawful permanent resident who adjusted status through the Cuban Adjustment Act. The two were divorced on December 22, 2010 and V-L- died the following year on August 7, 2011 without ever having become a U.S. citizen.

A petitioner must establish eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Here, the petitioner submitted her Form I-360 on July 3, 2012. Although she did so within two years from the date of the termination of her marriage to V-L-, she did not submit the Form I-360 prior to V-L-'s death. As he remained a lawful permanent resident at the time of his death, the petitioner cannot establish a qualifying relationship with a lawful permanent resident of the United States and eligibility for preference immigrant classification based on that relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act.

On appeal, counsel argues that the director failed to take into consideration sections 811 and 823 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) in denying the petitioner's self-petition. Counsel asserts that section 811 of VAWA 2005 extends the definition of "VAWA self-petitioner" to include "VAWA Cuban adjustment" cases. See Violence

¹ Name withheld to protect the individual's identity.

Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, (VAWA 2005). Counsel further asserts that section 823 of VAWA 2005 allows for abused spouses of lawful permanent residents who adjusted under the Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act (CAA)) to qualify for VAWA relief. *Id.* Counsel argues that since V-L- adjusted under the CAA, the petitioner is eligible for VAWA relief because, as per VAWA 2005, she filed her self-petition within two years of his death notwithstanding the fact that he was a U.S. lawful permanent resident at the time.

Section 811 created a uniform definition for the term “VAWA self-petitioner” which includes aliens who qualify for relief under the CAA “as a child or spouse who has been battered or subjected to extreme cruelty.” Section 823 of VAWA 2005 amended the relief sought under the CAA to include the following:

The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(J). An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies . . . or for 2 years after the date of termination of the marriage . . . if there is demonstrated a connection between the termination of a marriage and the battering or extreme cruelty by the Cuban alien.

Id.

While the petitioner has not established that she had a qualifying relationship with a lawful permanent resident and her corresponding eligibility for immigrant classification based upon that relationship as required by section 204(a)(1)(B)(ii)(II) of the Act, she was not precluded from filing for adjustment of status under the CAA. An application for adjustment of status under the CAA is submitted on a Form I-485, and filed with the U.S. Citizenship and Immigration Services (USCIS) Lockbox. See www.uscis.gov/i-485addresses. As an application for adjustment of status to that of a lawful permanent resident as the spouse of a Cuban national under section one of the CAA is not currently before us, the petitioner’s appeal will be dismissed.²

² The petitioner submitted a Form I-485 to USCIS on July 3, 2012 but did not indicate at Part 2 the reason for applying for adjustment of status. The director denied this Form I-485 on July 27, 2013 based solely on the denial of the Form I-360. As the petitioner is seeking adjustment under the CAA, the director may reopen the Form I-485 for the purpose of transferring the application to the appropriate USCIS office for consideration under the CAA, as amended by VAWA 2005.

Conclusion

In these proceedings, the petitioner bears the burden to establish her 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. Accordingly, the appeal will be dismissed and the self-petition will remain denied.

ORDER: The appeal is dismissed.