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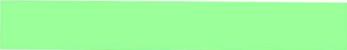


U.S. Citizenship
and Immigration
Services

Date: **SEP 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), (B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii), (B)(ii)

ON BEHALF OF PETITIONER:

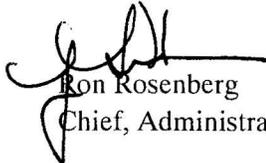


INSTRUCTIONS:

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 Acting Director, Vermont Service Center (“the director”), denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under sections 204(a)(1)(A)(iii), (B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(A)(iii), (B)(ii), as an alien battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident.

The director denied the petition determining that the petitioner had failed to establish a qualifying relationship with her former spouse, and her corresponding eligibility for immediate relative classification. The director found also that the petitioner failed to establish that she married her former husband in good faith, resided with him, and that he subjected her to battery or extreme cruelty during their marriage.

Applicable Law and Regulations

Sections 204(a)(1)(A)(iii)(I) and (B)(ii)(I) of the Act provide that an alien who is the spouse of a United States citizen or lawful permanent resident may self-petition for immigrant or preference classification if the alien demonstrates that he or she entered into the marriage with the 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 under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Sections 204(a)(1)(A)(iii)(II) and (B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II), (B)(ii)(II).

An individual who is no longer married to a citizen or lawful permanent resident of the United States remains eligible to self-petition under these provisions if he or she 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 or lawful permanent resident spouse. Sections 204(a)(1)(A)(iii)(II)(aa), (B)(ii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (B)(ii)(II)(aa).

Section 204(a)(1)(J) of the Act, states, in pertinent part, the following:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, that: “The self-petitioner’s remarriage . . . will be a basis for the denial of a pending self-petition.”

(iii) *Citizenship or immigration status of the abuser.* The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.

* * *

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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 . . . spouse, must have been perpetrated against the self-petitioner . . . 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 sections 204(a)(1)(A)(iii) and (B)(ii) 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 or 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

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who claims to have entered the United States without inspection in February 2007. The petitioner married J-R-¹, a person she claims is a United States citizen, on May 1, 2009. The petitioner, through counsel, claims to have divorced J-R- on April 28, 2010. The director determined, among other things, that the petitioner had not established a qualifying spousal relationship and corresponding eligibility for immediate relative or preference classification. The director specifically found that the petitioner's marriage was terminated on April 28, 2010, more than two years prior to the filing of the Form I-360; the petitioner provided no evidence of her spouse's status as a citizen or lawful permanent resident of the United States; and indicated that she remarried after divorcing her abuser spouse.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On appeal, counsel claims that the petitioner's marriage terminated on April 28, 2010 and her Form I-360 was filed on April 28, 2012, within two years of her divorce. Counsel submits a USPS printout identifying a package that was delivered to [REDACTED] in Vermont on April 28, 2012. Counsel contends that the petitioner fell within the two-year filing requirement under section 204(a)(1)(A)(iii)(II)(aa)(CC) or (B)(ii)(II)((aa)(CC) of the Act.

¹ Name withheld to protect the individual's identity.

The record fails to support counsel's claim. The envelope mailed to the Vermont Service Center containing the petitioner's Form I-360 was received on April 28, 2012, which is within the two-year filing requirement. However, there is no evidence in the record supporting counsel's assertion that the petitioner's marriage was terminated on April 28, 2010. Section 25-325 of the Arizona Revised Statutes Annotated provides that a "decree of dissolution of marriage . . . is final when entered." Arizona Rules of Family Law Procedure provide, in pertinent part, that "all judgments shall be in writing and signed by a judge . . . The filing with the clerk of the judgment constitutes entry of such judgment, and the judgment is not effective before such entry." Ariz. R. Fam. L.P. 81(A). The clerk is required to distribute to all parties a notice of the entry of judgment stating the date of entry, and a specifically designated notice form, a minute entry, or a conformed copy of the file stamped judgment is used to provide such notice. Ariz. R. Fam. L.P. 81(D). The petitioner provided only page one of a five-page document entitled "Decree Dissolution Of Marriage Without Children" from the Arizona Superior Court in ██████ County, which has a stamp indicating "COPY[,] APR 28 2010[,] ██████, CLERK, SUPERIOR COURT." The petitioner has not provided the notice of entry of judgment. Consequently, the petitioner has not established the filing of her Form I-360 was within the two-year filing requirement.

The director determined also that the petitioner had not established a qualifying spousal relationship because she failed to submit evidence of her former spouse's status as a citizen or lawful permanent resident of the United States. Counsel does not address the director's finding, and the petitioner has not submitted any evidence on appeal to establish J-R-'s status as either a U.S citizen or lawful permanent resident.²

Additionally, the petitioner indicated at Part 7 of the Form I-360 that she had three prior marriages and J-R- had two prior marriages. The petitioner must provide proof of the termination of all of her prior marriages. 8 C.F.R. § 204.2(c)(2)(ii). In the absence of proof that the petitioner was legally free to marry J-R-, she is unable to establish a qualifying spousal relationship, even if J-R- is a U.S. citizen or lawful permanent resident.

The director further found that the psychological evaluation from ██████ a licensed psychologist with ██████ indicated that the petitioner remarried after divorcing her abuser spouse. In the psychological evaluation Dr. ██████ stated that the petitioner "is now married to a man she loves." The regulation at 8 C.F.R. § 204.2(c)(1)(ii) states that remarriage prior to adjudication of a self-petition is a basis for denial. Counsel does not address this ground for denial on appeal.

In sum, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen or lawful permanent resident and that she is eligible for immigrant or preference classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA), (cc) and (B)(ii)(II)(aa)(AA), (cc) of the Act.

²At Part 7 of the Form I-360, the petitioner claimed both that her husband was born in the United States and that he was born in Mexico.

Joint Residence

On the Form I-360 the petitioner indicated that she and J-R- resided together from May 1, 2009 until October 30, 2009, and their last address was on [REDACTED] in [REDACTED] Arizona. In her letter, the petitioner stated that upon her marriage to J-R- they moved to an apartment on May 1, 2009. She stated that she left her former husband “several times” and that they “lost [their] apartment because [J-R-] didn’t pay the rent, and since [she] wasn’t there [she] stopped paying all the bills.” The petitioner stated that they then moved to her former husband’s house, and that the house had “no utilities, no appliances, that was one of [the] hardest times in [her] life, but little by little [she] started buying basic stuff.” The petitioner provided no further details about her claimed marital residence. She does not, for example, describe their house, shared belongings, and residential routines or provide any other substantive information to demonstrate that she resided with J-R- as a married couple.

In addition to her letter the record contains letters from the petitioner’s niece, [REDACTED] and her sister, [REDACTED] Ms. [REDACTED] stated that the petitioner was unwilling to give her address to her because the petitioner’s home had no gas or water. Neither Ms. [REDACTED] nor Ms. [REDACTED] indicated that they visited the petitioner and J-R- at the claimed marital residence.

The record also contains photographs that are undated and are not identified as having been taken at the marital residence; and a short-term lease agreement, dated March 2009, and signed by the petitioner and J-R- for an apartment. However, the petitioner stated in her letter that she had not resided at the apartment and stopped paying the bills “since [she] wasn’t there.”

The preponderance of the relevant evidence fails to demonstrate that the petitioner resided with her former husband during their marriage. The letter of the petitioner is general and does not provide detailed information about the claimed marital residence. The letters of her niece and sister provide no substantive information about the claimed marital residence. The photographs are undated and the lease agreement has little probative value given that the petitioner stated that she did not reside at the apartment with J-R-. When viewed in the aggregate, the relevant evidence shows that the petitioner did not reside with her former husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd), (B)(ii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In her letter, the petitioner stated that not long after she divorced her first husband, her mother died and J-R- came into her life. She stated that after J-R- proposed to her they got married and moved into an apartment. She stated that she had not resided at the apartment and stopped paying the bills “since [she] wasn’t there.” The petitioner stated further that and after a few months they moved into J-R-’s house. The petitioner does not provide further details about the first time she met J-R-, their courtship, decision to marry, engagement, marriage ceremony, and shared experiences, apart from the abuse.

The petitioner also submitted letters from [REDACTED] Ms. [REDACTED] stated that the petitioner “was very in love to be able to stay with [J-R-],” but she provides no further information to establish her personal knowledge of the petitioner’s relationship with J-R-. Ms. [REDACTED] does not mention the petitioner’s relationship with J-R-.

The record also contains a lease agreement and photographs. The photographs are undated and provide no insight into the petitioner’s intentions in marrying J-R-. Although the short-term lease agreement is signed by the petitioner and J-R-, the petitioner indicated that she did not live at the apartment and this evidence is not probative of the petitioner’s good-faith intentions in marrying.

Upon full review of the record, the relevant evidence fails to demonstrate that the petitioner married J-R- in good faith. The letters of the petitioner and her sister and niece provide little insight into the petitioner’s relationship with J-R- and her intentions in marrying him; the photographs are undated, and while the petitioner and J-R- signed a lease agreement for an apartment, she did not live with him at the apartment. The preponderance of the relevant evidence fails to demonstrate that the petitioner married her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa), (B)(ii)(I)(aa) of the Act.

Battery or Extreme Cruelty

In her letter, the petitioner stated that J-R-’s behavior changed after their marriage. She stated that he “prohibited [her] from seeing [her] daughters, or [her] family (sisters) . . . [told] [her] what to wear, how many minutes took to drive to work and back.” She stated that they often had arguments and later she confronted him after she learned that he was taking “crystal.” The petitioner stated that her husband was violent and she “got to the point that [she] stayed with him not because of love but fear.” She stated that one time that she left her husband she went to her daughter’s house and he came looking for her, and “since [she] wasn’t there he exploded punching all the tires of the cars parked in the house. [She] could not take it anymore so [she] filed for divorce and restraint order.”

In addition to her statement, the petitioner submitted a psychological evaluation. Dr. [REDACTED] provided more detailed information about incidents described in the petitioner’s statement and discussed other incidents that were not mentioned in the petitioner’s statement. Dr. [REDACTED] stated that the petitioner told her that whenever J-R- refused to allow her to leave the room he would push her hard against the wall or back into the room. Dr. [REDACTED] stated further that the petitioner told her that one time, while J-R- was driving he tried to hit the petitioner’s head, but struck the windshield instead. Dr. [REDACTED] stated that the petitioner also told her that J-R- damaged the tires of her truck when she tried to leave him. Dr. [REDACTED] stated that when the petitioner talked about her “ex-husband’s offensive and demeaning behavior towards [the petitioner], symptoms of nervousness (e.g., rapid hand movements) and agitation (e.g., perspiration) emerged.” Dr. [REDACTED] administered several psychological tests and opined that the petitioner continued to suffer symptoms consistent with depression and anxiety due to the impact of the domestic violence she experienced during her marriage.

The petitioner submitted a police report stating that in September 2009 a tire of the petitioner’s van was slashed, and no suspect was identified, as well as a request for a protective order.

Upon a full review of the record, the petitioner has demonstrated that her former husband battered and subjected her to extreme cruelty during their marriage. The petitioner's own statements are supported by the request for a protective order, the police report, and the detailed letter from a psychologist who substantively discusses how the petitioner continues to suffer symptoms of depression due to her husband's abuse. The preponderance of the evidence demonstrates that the petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

The petitioner demonstrated that her former husband battered and subjected her to extreme cruelty during their marriage. However, the petitioner has not demonstrated that she resided with her former husband, married her former husband in good faith, and had a qualifying relationship as the spouse of a U.S. citizen or lawful permanent resident and is eligible for immigrant or preference classification based upon that relationship.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.