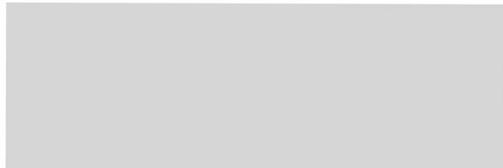




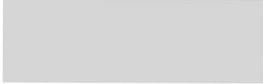
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 15 2015**

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.

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 he has a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based on this qualifying relationship, that he was battered or subjected to extreme cruelty by his former wife, and that he is a person of good moral character.

On appeal, the petitioner submits a statement.

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].

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

Facts and Procedural History

The petitioner, a citizen of Pakistan, married V-K-¹, a U.S. citizen, on February [REDACTED] in Pakistan. On [REDACTED] V-K- gave birth to the petitioner's daughter. The petitioner subsequently entered the United States on January 23, 2009, on a K-3 visa. The couple divorced on February [REDACTED]. On May 24, 2011, the petitioner filed a Form I-360 self-petition, which was denied on January 30, 2013, for failure to demonstrate that the petitioner was battered or subjected to extreme cruelty, and that he resided with his spouse. The petitioner did not appeal the denial. He filed the instant Form I-360 self-petition on March 21, 2014, more than two years after his divorce from V-K-. The director denied the petition primarily on the ground that the petitioner's divorce rendered him unable to establish that he 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 he failed to demonstrate that V-K- battered him or subjected him to extreme cruelty, and that he failed to establish his good moral character. The petitioner timely appealed.

We review these proceedings *de novo*. 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 he has a qualifying relationship with a U.S. citizen, and that he is eligible to be classified as an immediate

¹ Name withheld to protect the individual's identity.

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 relationship by demonstrating that he 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 record contains a Judgment from the Los Angeles Superior Court indicating that the petitioner's marriage to V-K- was legally terminated on February [REDACTED] over three years before the petitioner filed the instant self-petition on March 21, 2014. As the petitioner was not married to V-K- within two years of filing the instant self-petition, he cannot demonstrate a qualifying relationship to him. He 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, the petitioner asserts that he preserved eligibility for relief under section 204(a)(1)(A)(iii) of the Act by filing his first Form I-360 self-petition within two years of his divorce from V-K-, 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. Further, the statute is not subject to equitable tolling.

The director correctly determined that the petitioner no longer has a qualifying relationship with V-K- because they divorced over two years before the petitioner 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 he 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 he was battered or subjected to extreme cruelty by his former spouse, or that he is a person of good moral character. On appeal, the petitioner briefly states that he disagrees with the director's determination on these grounds, but does not provide any further discussion of his eligibility with respect to these criteria. As the petitioner has failed to establish that he has a qualifying relationship as the spouse of a U.S. citizen and his eligibility for immediate relative classification based on that relationship, we will not discuss the director's additional grounds for denial.

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

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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.