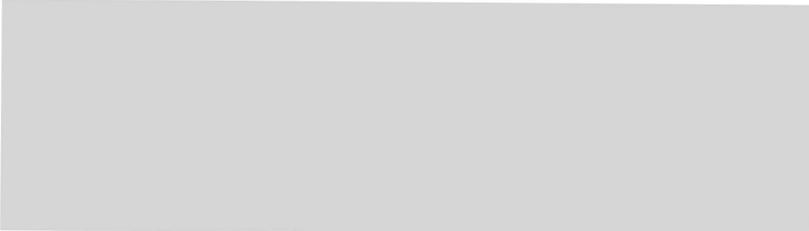




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 30 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Vermont Service Center director (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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident former spouse.

The director denied the petition based on the petitioner's failure to establish that she has a qualifying spousal relationship with a lawful permanent resident of the United States and is eligible for immigrant classification based on this qualifying relationship. The director also indicated that the petitioner failed to submit sufficient evidence to establish that she resided with her spouse, that she married him in good faith, that he battered her or subjected her to extreme cruelty during the marriage, and that she is a person of good moral character.

On appeal, the petitioner submits a personal affidavit and additional evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii)(I) 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 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)(B)(ii) 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)(B)(ii) of the Act for his or her classification as an immediate relative . . . if he or she:

\* \* \*

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the LPR spouse].

The evidentiary guidelines for a self-petition under section 204(a)(1)(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 . . . 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 . . . .

#### *Facts and Procedural History*

The petitioner, a citizen of India, married R-M-<sup>1</sup>, on [REDACTED] 2006, in [REDACTED] India. U.S. Citizenship and Immigration Services (USCIS) records show that at the time of the marriage, R-M- held H-1B nonimmigrant status in the United States. On May 11, 2006, the petitioner entered the United States as an H4 nonimmigrant spouse of R-M-. The petitioner returned to India in July of 2006. In June of 2007, R-M- adjusted status to that of lawful permanent resident.<sup>2</sup> R-M- divorced the petitioner on [REDACTED] 2011, in [REDACTED], Ohio. The petitioner filed the instant self-petition on May 6, 2014. The director denied the self-petition principally because it was filed over two years after R-M-'s divorce from the petitioner was finalized.

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)(B)(ii) of the Act, the petitioner must show that she has a qualifying spousal relationship with a lawful permanent resident, and that she is eligible to be classified as an immediate relative of that person under section 203(a)(2)(A) of the Act. INA § 204(a)(1)(B)(ii)(II)(cc), 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(cc). In the instant matter, the petitioner seeks to establish a qualifying relationship by demonstrating that she was "a bona fide spouse of a lawful permanent resident *within the past 2 years and* . . . who demonstrates a connection between the

<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> USCIS records indicate that R-M- became a naturalized U.S. citizen after the date of the couple's divorce.

*legal termination of the marriage within the past 2 years* and battering or extreme cruelty by the lawful permanent resident spouse." INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(bb), 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bb) (emphasis added). Here, the petitioner submitted a Judgment Entry Decree of Divorce from [REDACTED], Ohio Court of Common Pleas, indicating that her marriage to R-M- was legally terminated on [REDACTED] 2011, over two years before the petitioner filed the instant self-petition on May 6, 2014.

In her affidavit submitted with the self-petition, the petitioner stated that the divorce obtained by R-M- was improper because R-M- stated that the two had been separated since July 5, 2006. She further explained that this date of separation is incorrect because R-M- filed a Form I-130 petition on her behalf in September of 2007. On appeal, the petitioner reasserts that R-M- obtained the divorce by presenting a false date of separation to the Ohio court. While we acknowledge that the petitioner submitted documentation showing that R-M- prepared immigration documents on her behalf after July 5, 2006, the validity of the divorce is a matter that must be resolved with issuing court. Section 204(a)(1)(B)(ii) of the Act allows a former spouse to file a self-petition for up to two years after the termination of the marriage and there is no exception to this rule provided in the statute or related regulations. Here, the instant self-petition was filed over two years after the petitioner's husband divorced her. As the petitioner was not married to R-M- 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 203(a)(2)(A) of the Act.

#### *Other Grounds for Denial*

The director also concluded, without analysis, that the petitioner failed to submit sufficient evidence to establish that she resided with her lawful permanent resident spouse, that she married him in good faith, that he battered her or subjected her to extreme cruelty during the marriage, and that she is a person of good moral character. The record contains several police clearances from India, and personal affidavits from the petitioner asserting that she resided with and was abused by R-M-. Although the director did not issue a request for additional evidence on these issues, the petitioner has not overcome the director's principal ground for denial (demonstration of a qualifying spousal relationship), and therefore we do not reach the director's additional grounds for denial.

#### *Conclusion*

The director correctly determined that the petitioner no longer has a qualifying spousal relationship with R-M- because their divorce was finalized 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 lawful permanent resident and is eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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

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*NON-PRECEDENT DECISION*

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been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.