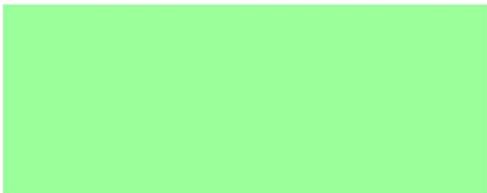


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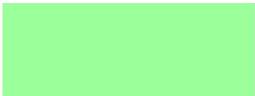
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

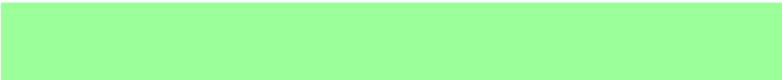


U.S. Citizenship
and Immigration
Services



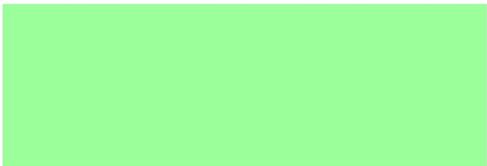
Date: **FEB 13 2015**

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 Acting 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 pursuant to 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, determining that the petitioner did not demonstrate that she has a qualifying spousal relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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 individual who is no longer married to a citizen 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 spouse. Section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

Section 204(a)(1)(J) of the Act 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 are explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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

Pertinent Facts and Procedural History

The petitioner was born in Sierra Leone and initially entered the United States as a B-2 nonimmigrant visitor on March 25, 1992. She married her U.S. citizen spouse, K-K,¹ on [REDACTED] in Maryland, and they divorced on [REDACTED]. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on September 26, 2013. In support of the self-petition, she provided a Decree Absolute from the High Court of Sierra Leone and other documents reflecting that the petitioner had married a prior husband in Sierra Leone on [REDACTED] and that the marriage was subsequently dissolved. The petitioner also provided two conflicting letters from the Master's Office in the High Court of [REDACTED] Sierra Leone, certifying that the petitioner's first marriage was dissolved on [REDACTED] and on [REDACTED]. The director ultimately denied the petition, citing to other adverse evidence from the petitioner's alien file (A-file), and finding that the petitioner failed to establish that she shared a qualifying spousal relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility.

¹ Name withheld to protect the individual's identity.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner married her claimed first husband, [REDACTED] on [REDACTED] in [REDACTED] Sierra Leone. In support of the instant self-petition, the petitioner submitted a Decree Absolute from the High Court of Sierra Leone reflecting that her marriage to [REDACTED] dissolved on [REDACTED]. She also provided a May 14, 2007 letter from the Master's Office of the High Court of [REDACTED] Sierra Leone, signed by an individual with an illegible signature certifying that the marriage was dissolved on [REDACTED]. However, the petitioner provided a contradictory letter dated August 3, 2010, signed by [REDACTED] the Master and Registrar of the High Court of [REDACTED] certifying that the petitioner's divorce "dated [REDACTED] is authentic."

In her decision, the director found that the petitioner had not established the validity of the decree of dissolution of marriage from [REDACTED] and, consequently, the petitioner had not established that she was legally free to marry K-K-. The director cited to derogatory evidence in the petitioner's A-file relating to a prior Form I-130 spousal petition that K-K- had filed on her behalf.² Specifically, a 1994 overseas investigation by the U.S. Embassy in Sierra Leone revealed that the High Court of Sierra Leone was unable to locate the file for the year of [REDACTED] the year in which the petitioner initially claimed she was divorced. The director found that the petitioner had not established the validity of her divorce decree and that she was free to marry K-K-. The director consequently found that the petitioner had not established that she shared a qualifying spousal relationship with K-K- and corresponding eligibility for immigrant classification under section 204(a)(1)(A)(iii)(II)(cc) of the Act.

On appeal, the petitioner asserts that her [REDACTED] divorce decree was valid, and maintains that the U.S. Embassy's 1994 investigation "was completely unreliable since it was conducted by foreign nationals contracted to the Consul." She maintains that the 1994 U.S. Embassy investigation was flawed because they first found her birth certificate and dissolution to be invalid, but subsequently retracted their finding that the birth certificate was invalid. She suggests that if one part of their initial finding was retracted, then their finding that her divorce decree was invalid must be considered flawed as well. In conclusion, the petitioner asserts that the evidence she has submitted to establish that her marriage to [REDACTED] was dissolved in [REDACTED] must be accepted as valid.

Although we are required to consider any credible evidence that the petitioner submits, the determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. Section 204(a)(1)(J) of the Act, 8 C.F.R. § 204.2(c)(2)(i). A review of the petitioner's A-file shows that even apart from the U.S. Embassy's investigation, the petitioner has presented a contradictory record of her personal history, including statements regarding the date of her claimed divorce, her marital status and the names and number of husbands she has had, and the

² As will be discussed, the petitioner's A-file contains various petitions and applications filed by her and on her behalf before the agency.

existence, names, and sex of her children.

For example, with the instant Form I-360 self-petition the petitioner provided several Internal Revenue Service (IRS) Forms 1040A, U.S. Individual Tax Return, as evidence relating to the bona fides of her marriage to K-K-. According to the 1993 IRS Form 1040A, she and K-K- had a single dependent daughter named [REDACTED] who lived with them for 12 months of the year and whose date of birth they listed as [REDACTED] on Schedule EIC, Earned Income Credit. In the 1994 IRS Form 1040A, she declared that they had a dependent son named [REDACTED] who was born in [REDACTED] and lived with them for 12 months of the year, but did not declare a daughter. The social security number for both her 1994 "son" and 1993 "daughter" are the same. According to a 1995 Form 502, Maryland Tax Return, the petitioner and K-K- declared a child named [REDACTED] and on the 1996 Form 502 they declared a child named [REDACTED]. Regardless of the gender of [REDACTED] or [REDACTED] K-K- could not have been the father as he was born on [REDACTED], three years after the birth of the claimed child. Moreover, the petitioner has not claimed to have a child with any of these names on the instant Form I-360 self-petition or her other immigration-related petitions and applications contained in her A-file.

The petitioner's A-file contains a prior Form I-589, Application for Asylum in the United States, which was received by the agency on August 1, 1992. On the Form I-589, the petitioner stated at Part B that she had no spouse and no unmarried children under the age of 21 years of age. However, on the accompanying Form G-325A, Biographic Information, she lists her prior spouse as [REDACTED] and asserted that their marriage terminated on [REDACTED] in [REDACTED] Sierra. The petitioner signed the Form I-589 and related Form G-325A on July 17, 1992.

On a Form I-130 filed on April 26, 1994, K-K- indicated that the petitioner had only one child, a daughter named [REDACTED] born on [REDACTED]. Moreover, on two Forms I-485, Application to Register Permanent Residence or Adjust Status (the first filed in the Baltimore District Office on April 26, 1994, and the second ([REDACTED]) filed on November 4, 1996), the petitioner declared that [REDACTED] born on [REDACTED] was her only child. In conjunction with her first Form I-485, the petitioner submitted a Form G-325A in which she stated that her marriage to [REDACTED] terminated on [REDACTED] which contradicts the termination date of [REDACTED] that she subsequently claimed on the instant Form I-360 self-petition. On June 22, 1994, the petitioner was interviewed by an immigration officer in Baltimore in connection with her first Form I-485 application. According to the interviewing officer's handwritten notes on the first Form I-485, the petitioner confirmed to the officer that she had a "no other children" apart from her daughter, [REDACTED].

On two Forms I-821, Application for Temporary Protected Status, filed on September 8, 1998 ([REDACTED]) and August 12, 2003, as well as on two Form I-360 self-petitions filed on September 29, 1997 ([REDACTED]) and October 17, 2000 ([REDACTED]), the petitioner declared the following two children: [REDACTED] born on [REDACTED], and [REDACTED] born on [REDACTED].

NON-PRECEDENT DECISION

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On a Form I-140, Immigrant Petition for Alien Worker, filed on June 21, 2006, the petitioner's employer indicated at Part 7 that the petitioner was married to [REDACTED] and that she had two children: (1) [REDACTED] a daughter born on [REDACTED], and (2) [REDACTED] a son born on [REDACTED]. Although the petitioner previously claimed a daughter named [REDACTED] or [REDACTED] she had never previously claimed to have a child with a date of birth of [REDACTED]. In support of the Form I-140 petition, her employer provided a Decree Absolute from the High Court of Sierra Leone reflecting that the petitioner's marriage to [REDACTED] dissolved on [REDACTED]. This decree contradicts the decree that she provided with the 2013 Form I-360 self-petition indicating that the marriage was dissolved on [REDACTED].

On her most recent Form I-360 self-petition, filed September 26, 2013, the petitioner claimed to have been married on only two occasions, and provided evidence relating only to husbands named [REDACTED] and K-K-. She did not list either [REDACTED] from her 1992 Form I-589, or [REDACTED] from the 2006 Form I-140 petition. The petitioner listed [REDACTED] and [REDACTED] as her only children.

In short, from 1992 to the present, the petitioner's A-file contains numerous applications and petitions reflecting conflicting claims regarding her marital history, the date of her claimed divorce from [REDACTED], and her children. It is unclear whether the petitioner was married once or twice prior to marrying K-K-, whether she may have divorced [REDACTED] in [REDACTED] or [REDACTED] whether she is now married to [REDACTED] and, if so, when she married him, and whether she is childless or has several children. Finally, if she does have children, then the petitioner's record does not establish the identity of each father and the petitioner's marital relationship to each father, how many children, their names or dates of birth, and whether at least one ([REDACTED]) is a son or a daughter.

Accordingly, to the extent that the petitioner requests that the agency disregard the adverse results of an overseas investigation, her remaining statements and evidence are contradictory and detract from the credibility of her assertions. Based on her own conflicting evidence, the petitioner has not established by a preponderance of the evidence that her marriage to [REDACTED] was her only marriage prior to the marriage to K-K-, whether her marriage to [REDACTED] was dissolved in [REDACTED] or [REDACTED] whether her marriages to both or [REDACTED] and [REDACTED] were dissolved prior to her marriage to K-K-, and whether and when she married [REDACTED]. Without evidence regarding her prior marriages and their termination, the petitioner has not demonstrated by a preponderance of the evidence that she was free to marry K-K-, and therefore that she has a qualifying spousal relationship and corresponding eligibility for immediate relative classification, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

As an additional matter, even if the petitioner had demonstrated that she was free to marry K-K-, they divorced on [REDACTED] over 13 years before the petitioner filed the instant Form I-360 self-petition on September 26, 2013.³ Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See

Act allows a former spouse of a U.S. citizen to file a self-petition for up to two years following the termination of a qualifying marriage. Because the petitioner did not file the petition within two years of the termination of her marriage to K-K-, she also has not demonstrated that she has a qualifying spousal relationship and corresponding eligibility for immigrant classification, pursuant to sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Conclusion

The petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.