



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 02 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 Director, Vermont Service Center (“acting director”), denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The petition remains denied.

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 her U.S. citizen ex-husband.

The acting director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her ex-husband during their marriage. On April 24, 2014, we dismissed the petitioner’s subsequent appeal, affirming the acting director’s determination and further finding that because the petitioner had not established the requisite battery or extreme cruelty, she also failed to demonstrate any connection between her divorce and any such battery or extreme cruelty. We consequently concluded that the petitioner did not have a qualifying spousal relationship with a U.S. citizen that made her eligible for immediate relative classification. On motion, the petitioner submits a brief and a new psychological report.

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 United States 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 an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Guyana who entered the United States on August 26, 2009, as a nonimmigrant visitor. The petitioner married T-D-¹, a U.S. citizen, on December [REDACTED] in [REDACTED] County, Minnesota. The marriage ended in divorce on September [REDACTED]. The petitioner filed the instant Form I-360 self-petition on February 28, 2012. The acting director denied the self-petition on July 18, 2013, and we dismissed the subsequent appeal on April 24, 2014.

The petitioner submits this motion to reopen and reconsider and asserts that she has established the requisite extreme cruelty and submits a brief and additional evidence in support of this assertion.

¹ Name withheld to protect the individual’s identity.

Although the petitioner's submission does not meet the requirement of a motion to reconsider because it is not supported by any pertinent precedent decisions or other sources or authority to establish that the decision was based on an incorrect application of law or Service policy pursuant to 8 C.F.R. § 103.5(a)(3), it does meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen is granted.

We conduct review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and the new evidence submitted on motion fail to overcome the grounds for denial. The appeal will remain dismissed for the following reasons.

Battery or Extreme Cruelty

In our April 24, 2014 decision, we reviewed the evidence of record and determined that the petitioner had not alleged that she had ever been subjected to battery and that her claims were insufficient to establish that she had been subjected to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In coming to this conclusion, we specifically evaluated and discussed in our decision: the petitioner's initial affidavit; her affidavit that was submitted in response to the Request for Evidence (RFE); a psychological evaluation and a follow-up letter from [REDACTED] an affidavit from the petitioner's sister, [REDACTED] and T-D-'s criminal records, including a harassment restraining order and a no contact order against a third-party individual. On motion, the petitioner submits a new psychological report and repeats the contentions made below that she was emotionally abused by T-D- who committed multiple, different acts to isolate and control her. The petitioner contends that the issue is whether or not there is psychological abuse that threatens to result in physical or mental injury, asserting that two psychologists have now concluded that this has, in fact, occurred.

The psychological report submitted on motion, dated May 10, 2014, by licensed psychologist [REDACTED] diagnosed the petitioner with severe Posttraumatic Stress Disorder (PTSD), Major Depressive Disorder, and Panic Attack Disorder. According to Dr. [REDACTED] the petitioner's PTSD is "secondary to her former husband's threats and to her recent divorce."

As we stated in our previous decision, although the input of any mental health professional is respected and valuable, and we are not questioning the factors the psychologists have considered in diagnosing the petitioner, nonetheless, the record still does not contain credible, probative details of any particular incident or other behavior that would constitute extreme cruelty. The additional psychological report by Dr. [REDACTED] submitted on motion does not describe any particular incident of verbal abuse, any specific threat, or any other behavior by T-D-. As such, the report fails to describe in probative detail any actual or threatened violence, psychological or sexual abuse, or other behavior that would constitute extreme cruelty as that term is defined 8 C.F.R. § 204.2(c)(1)(vi). In addition, the new report from Dr. [REDACTED] contains a significant inconsistency with the previous report from Dr. [REDACTED]. According to Dr. [REDACTED] the petitioner divorced her first husband, N-L-², due to verbal abuse. However, according to the previous psychological report submitted by Dr. [REDACTED] the petitioner's first husband punched her, slapped her, beat her with a cord, and attacked her with a knife on at least two occasions which resulted in scars on her arm and a three-inch long scar on her hand. This wide

² Name withheld to protect the individual's identity.

disparity in descriptions of the mistreatment the petitioner suffered from her first husband, N-L-, reduces the probative value of the psychological reports' assertions regarding the petitioner's claims. The petitioner submits no further statement on appeal to address her claims and there is no other relevant evidence in the record that has not already been addressed.

Upon a full review of all the relevant evidence submitted below and on motion, the record does not demonstrate that the petitioner was threatened, or isolated, or that her spouse abusively controlled her such that his actions constituted extreme cruelty as defined in the regulation. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that T-D- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As we previously found, the petitioner has also not demonstrated a qualifying spousal relationship and eligibility for immediate relative classification based on her former marriage to T-D-. The petitioner failed to establish the requisite battery or extreme cruelty and consequently failed to demonstrate any connection between her divorce and any such battery or extreme cruelty. On motion, the petitioner does not address this issue. Therefore, the petitioner has not demonstrated that she had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

The petitioner has failed to establish by a preponderance of the evidence that her former spouse, T-D-, subjected her to battery or extreme cruelty during their marriage, that she had a qualifying spousal relationship with him, and was eligible for immediate relative classification based on their former marriage.

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). Here, that burden has not been met. Consequently, the appeal will remain dismissed and the self-petition will remain denied.

ORDER: The motion to reopen is granted. The April 24, 2014 decision of the Administrative Appeals Office is affirmed and the self-petition remains denied.