



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JAN 16 2015 Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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:



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 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner had not established a qualifying relationship with a lawful permanent resident of the United States and the requisite battery or extreme cruelty.¹

On appeal, the petitioner submits a brief 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 U.S. 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

¹ The director’s decision erroneously indicated that the petitioner did not establish joint residence with her former spouse, but did not address this ground as a specific finding for denial.

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

The evidentiary guidelines for a self-petition 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

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner is a citizen of Colombia who entered the United States on March 14, 2006 as a nonimmigrant visitor. On November 27, 2006, the petitioner was served with a Notice to Appear in removal proceedings before the New York Immigration Court for remaining in the United States beyond her period of authorized stay.² On April [REDACTED] the petitioner wed D-M-, a lawful permanent resident of the United States, in New Jersey.³ Their marriage terminated in a divorce on June [REDACTED]

The petitioner filed the instant Form I-360 on July 11, 2011.⁴ The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's qualifying relationship as the spouse of a lawful permanent resident and the requisite battery or extreme cruelty. The petitioner responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We conduct appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reason.

² On July 9, 2013, the petitioner's removal proceedings were administratively closed.

³ Name withheld to protect the individual's identity.

⁴ On July 18, 2011, D-M- was ordered removed from the United States.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner was subjected to battery or extreme cruelty during her marriage. In her initial affidavit, the petitioner recounted that she did not know D-M-'s whereabouts, he never helped with household chores, he called her names, and he did not support her financially. She stated that D-M- told her that she and her son were dependent on him for their legal status. The petitioner also stated that D-M- abused alcohol and sexually assaulted her. In response to the RFE, the petitioner recounted that D-M- called her names, sexually assaulted her, and he broke "everything" in the kitchen. The petitioner only briefly discussed these incidents with one-sentence descriptions that fail to provide any substantive information to support her claim.

The petitioner in her initial affidavit stated that D-M- was arrested in September [REDACTED] for the sexual assault of underage girls and she provided evidence of his criminal history. The petitioner, however, has not demonstrated a causal connection between D-M-'s arrests and the alleged battery or extreme cruelty during the couple's marriage.

The petitioner submitted copies of a prescription for Motrin and a referral from a health center for physical therapy and an x-ray to evaluate and treat her back pain. The documents are dated January 29, 2009, which is during the time period she resided with D-M-. The petitioner, however, does not indicate that D-M- ever injured her nor does she provide any other information to establish a causal connection between the information contained in the medical documents and the alleged abuse.

The affidavits from the petitioner's friends, [REDACTED] also fail to provide any substantive information to demonstrate that D-M- subjected the petitioner to battery or extreme cruelty during their marriage. Ms. [REDACTED] stated that she has witnessed the "personal damage" D-M- caused the petitioner by becoming romantically involved with two minors. Her statement does not indicate that the petitioner was herself subjected to battery or extreme cruelty. Ms. [REDACTED] recounted that D-M- called the petitioner names, told the petitioner that she and her son were dependent on him for their legal status, and he did not assist with household chores or support the petitioner financially. Ms. [REDACTED] did not indicate that the petitioner was ever battered and the behaviors she described do not involve threatened violence, psychological or sexual abuse, or otherwise constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted two nearly identical letters dated February 24, 2011 and June 6, 2013 from [REDACTED] a counselor with [REDACTED] who stated that the petitioner participated in the organization's support group for domestic violence victims. Ms. [REDACTED] stated that the petitioner reported that D-M- abused her by calling her names and he "blackmail[ed] her with immigration." The brief description of D-M-'s behaviors fails to provide any substantive information to establish that the petitioner was subjected to extreme cruelty and Ms. [REDACTED] makes no mention of the sexual assaults the petitioner discussed in her affidavit.

The petitioner also submitted a psychological evaluation from [REDACTED] Ph.D., dated June 24, 2013. Dr. [REDACTED] stated that the petitioner "has some ongoing symptoms of post-traumatic stress disorder and anxiety." She reported that during the evaluation the petitioner stated that D-M- called her

names and reminded her of her legal status, he sexually assaulted her, and he was incarcerated for his “relationship” with a minor. Dr. [REDACTED] description of the claimed abuse lacks probative details. For example, she stated that “[s]everal times he reportedly raped [the petitioner],” but she did not further elaborate on the circumstances surrounding specific instances of sexual assault. The other incidents Dr. [REDACTED] mentioned in the evaluation, including name calling, do not constitute extreme cruelty, as that term is defined in the regulation.

On appeal, the petitioner asserts that the director failed to give adequate weight to her documentation. Although the petitioner has indicated that she was subjected to sexual abuse and other violent behavior, she has not provided probative information about any specific incident of abuse. The letters from her friends, counselor and the psychological evaluation also fail to provide any substantive information to demonstrate that D-M- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner’s documents show that D-M- was arrested in the United States and Colombia, but the petitioner has not shown that the arrests are in any way related to the petitioner and the abuse she claims she suffered during the marriage. The petitioner also failed to establish a causal connection between her medical treatment for back pain and the alleged abuse. Accordingly, the petitioner has not established that her former husband subjected her or her son to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Qualifying Relationship

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship and termination of all her prior marriages. The petitioner submitted as evidence of her qualifying relationship with a lawful permanent resident, her marriage certificate showing that she wed D-M- on April [REDACTED] in New Jersey and a copy of D-M-’s permanent resident card. On her Form I-360 she indicated that her marriage to D-M- was her only marriage. In the RFE, the director found that the petitioner’s claim that she has been married only one time conflicted with the record of proceeding. Specifically, the Record of Sworn Statement in Administrative Proceedings (Form I-877) contained in the petitioner’s file reflects that when she arrived at [REDACTED] on November [REDACTED] to pick up her eleven-year-old son she was taken by a Customs and Border Protection (CBP) officer into secondary inspection and questioned about her visit to the United States and family in Colombia. The petitioner orally testified in a question-and-answer statement, dated November 27, 2006, that she was married and her son was entering the United States only for a vacation. The director requested that the petitioner submit evidence of her divorce from this prior marriage. In response to the RFE, the petitioner did not provide an explanation for her prior claim to be married. Instead, she stated only that she was not previously married and submitted as supporting evidence: her baptism certificate; her birth certificate; the birth certificate of her child; and an affidavit from her former neighbors in Colombia, [REDACTED] and [REDACTED] attesting to their knowledge of the petitioner’s marital status as “single.” The director found this evidence to be insufficient because in the personal statement the petitioner submitted with the Form I-360 she did not specify that her marriage to D-M- was her only marriage.

On appeal, the petitioner submits a personal affidavit and complete copies of her birth registration and baptism certificate with certified translations. In her affidavit, the petitioner acknowledges that

she previously gave sworn testimony that she was married and seeking a divorce, but again claims this information is false and her first and only marriage was to D-M-. The “reciprocity schedule” for Colombia provides that:

Decree No. 540 of March 13, 1934 provided for the civil registration of births in Colombia with notaries, with municipal authorities where a notary has not been appointed, and with Colombian consular representatives in foreign countries. . . . Decree No. 540 of March 13, 1934 also provided for the registration of marriages, adoptions and deaths in the same procedure as required for birth certificates. Copies of these records may be obtained from the appropriate official authority where registered.

Complete copies of the page of the book where the birth, the marriage, and/or the death was registered (copia del folio) are issued on plain white paper and signed by the notary public. Applicants must present these civil records in support of their applications

The Catholic baptismal certificates always have a line for marginal notes. Usually, the marginal notes indicate if the person had been married under a religious ceremony. They are issued on official paper, letterhead paper of the church, or plain white paper signed and sealed by the issuing priest. To avoid fraud, the issuing priest's signature may be authenticated by the competent ecclesiastical or civil authority.⁵

The record contains a notarized copy of the petitioner’s birth registry from a civil authority in [REDACTED], Colombia issued on December 3, 2013. The petitioner’s birth registry states that there is no civil record of her marriage. The petitioner’s Catholic baptismal certificate was issued by the [REDACTED] Colombia on December 5, 2013 and also provides that there is no evidence that the petitioner has married in a religious ceremony.⁶ In addition, the petitioner’s son’s birth certificate is dated February [REDACTED] and shows that he has the petitioner’s maiden name as his last name and that the name of his father is unrecorded. Department of Homeland Security (DHS) records also show that the petitioner used her maiden name prior to her marriage to D-M-. Finally, the petitioner’s former neighbors in Colombia, [REDACTED] [REDACTED] declared before a notary on July 7, 2013 that they have known the petitioner for the previous 15 years and can attest that she has not entered into a civil or religious marriage in Colombia. These documents support the petitioner’s claim that her statements before the CPB officer were false and she did not have a prior marriage in Colombia and therefore that she had a valid marriage with D-M-.

However, although the petitioner established that she had a valid marriage with a U.S. lawful permanent resident, she nevertheless has failed to establish a qualifying relationship in these proceedings. An alien who has divorced an abusive U.S. lawful permanent resident may still self-petition if the alien demonstrates a connection between the legal termination of the marriage within the

⁵ <http://travel.state.gov/content/visas/english/fees/reciprocity-by-country/CO.html> (January 8, 2015)(printed and added to the record of proceeding).

⁶ The certificate shows that the issuing priest’s signature was authenticated by the [REDACTED] Colombia.

past 2 years and battering or extreme cruelty by the lawful permanent resident spouse. *See* Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act. As the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she has a qualifying relationship with a U.S. lawful permanent resident, as required by subsection 204(a)(1)(B)(ii)(II)(aa) of the Act.

Good Moral Character

Beyond the decision of the director, the record reflects that the petitioner gave false testimony for the purpose of obtaining a benefit under the Act, which precludes a finding of her good moral character pursuant to section 101(f)(6) of the Act.⁷ False testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits. *Kungys v. United States*, 485 U.S. 759, 780 (1988). The false testimony “appears to some degree whenever there is a subjective intent to deceive, no matter how immaterial the deception.” *Id.* The false testimony need not be material and does not include misrepresentations made for reasons other than obtaining immigration benefits, such as statements made out of embarrassment, fear or a desire for privacy. *Id.*

As discussed, the record reflects that when the petitioner arrived at [REDACTED] on November 27, 2006 to pick up her eleven-year-old son she was questioned about her son’s intended entry and her own prior entry.⁸ She testified in a question-and-answer statement that she was currently married and her son was entering the United States only for a one-month vacation. The petitioner in her January 6, 2014 affidavit submitted on appeal admits that her statements regarding her marital status were false and she was, in fact, single. The record indicates that the petitioner made these statements in order to establish her son’s nonimmigrant intent in entering the United States as a visitor. *See* Section 101(a)(15)(B) of the Act (defining a nonimmigrant visitor as an alien having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure). The petitioner’s false oral statements made under oath, in a question-and-answer statement, before an immigration officer in connection with the admission of her son to the United States constitute false testimony within the meaning of section 101(f)(6) of the Act. *See Matter of Ngan*, 10 I&N Dec. 725 (BIA 1964)(An alien’s oral false statements, under oath, in a question-and-answer statement before an immigration officer in connection with the processing of a visa petition to accord nonquota status to the alien’s wife and children, constitute false testimony within the meaning of section 101(f)(6) of

⁷ 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 Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003).

⁸ The record contains a copy of the petitioner’s Form DS-156, Nonimmigrant Visa Application, which she signed under penalty of perjury on December 20, 2005, indicating that when she applied for her nonimmigrant visitor visa at the U.S. Consulate in [REDACTED] Colombia, she presented herself as married, noting that she and her “husband” had strong economic ties in Colombia.

the Act.). Accordingly, subsection 101(f)(6) of the Act bars a finding of the petitioner's good moral character.

Even if the petitioner's false statements did not fall within an enumerated provision of section 101(f) of the Act, the record still shows that she lacks good moral character. Section 101(f) of the Act states, in pertinent part, that "[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes that "[a] self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community."

Primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). The petitioner did not discuss her moral character in either of her statements submitted below. Nor did she acknowledge below that she made false oral statements before an immigration officer on November 27, 2006. Although the petitioner admits to her false oral statements on appeal, she does not indicate that her actions were under extenuating circumstances. The petitioner did not discuss this misrepresentation in any of her statements submitted below or on appeal. The petitioner's repeated misrepresentations before the U.S. government constitute behavior that falls below the standards of the average citizen in the community pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner has not submitted any supporting evidence to establish her good moral character despite this behavior. She has also failed to demonstrate that she feels remorse or takes responsibility for her conduct. The petitioner has therefore failed to establish her good moral character pursuant to the final paragraph of section 101(f) of the Act and the regulations.

The petitioner's false testimony bars a finding of her good moral character pursuant to subsection 101(f)(6) of the Act. In addition, the petitioner's conduct falls below the standards of the average citizen in the community and prevents a finding that she is a person of good moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). She has therefore failed to demonstrate her good moral character as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established that she has a qualifying relationship with a lawful permanent resident who subjected her to battery or extreme cruelty during their marriage. Beyond the decision of the director, the petitioner has also not established her good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

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.