



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUN 01 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) 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 Center Director, Vermont Service Center (the director), denied the 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 spouse during her marriage.

The director denied the petition, finding that the petitioner did not establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, and that she is eligible for immigrant classification based on that relationship. Specifically, the director found the petitioner's former spouse became a lawful permanent resident after the termination of their marriage.¹

Applicable Law

Section 204(a)(1)(B)(ii) 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).

Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act states that if an individual is no longer married to a lawful permanent resident of the United States, a self-petition may be filed if the marriage was terminated, within the two years prior to filing, by divorce related to the abuse.

Section 204(a)(1)(J) of the Act, states, in pertinent part, the following:

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, the following:

¹ The director also noted that the record was insufficient to demonstrate she shared a joint residence with her former spouse during their marriage and that he battered or subjected her to extreme cruelty during their marriage. As the petitioner did not demonstrate a qualifying spousal relationship, we will not address the other stated grounds of ineligibility.

- (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 . . . a preference immigrant if he or she:
 - (A) Is the spouse of a . . . lawful permanent resident of the United States;
 - (B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the lawful permanent resident spouse].

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

Evidence for a spousal self-petition –

(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 is a citizen of India who married K-G-² on [REDACTED] in India. The petitioner claims to have last entered the United States on March 13, 2008. On [REDACTED], a judgment terminating the marriage between the petitioner and K-G- was entered at the New York State Supreme Court, [REDACTED] County. U.S. Citizenship and Immigration Service (USCIS) records show K-G- became a lawful permanent resident on June 19, 2012. The petitioner filed the instant petition on August 23, 2012. The director denied the petition finding the petitioner did not establish the requisite qualifying relationship with K-G- and her corresponding eligibility for immigrant classification based on that relationship because K-G- became a lawful permanent resident after their marriage was terminated.

² Name withheld to protect the individual's identity.

On appeal, the petitioner asserts that she and K-G- “are still married and live in [the] same apartment,” and submits evidence to establish a shared residence with K-G-. She does not discuss the divorce decree contained in the record.

Section 204(a)(1) of the Act provides that a petitioner must be either the spouse of a United States citizen or a lawful permanent resident of the United States to qualify for benefits as an abused spouse.³ In this case, the petitioner and K-G- divorced on [REDACTED] and K-G- became a lawful permanent resident on June 19, 2012. The petitioner did not have a qualifying relationship as an abused spouse of a lawful permanent resident at the time of filing and was ineligible for status as an abused spouse. A petitioner must demonstrate eligibility for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Accordingly, the petitioner did not have a qualifying relationship with K-G- at the time of filing, and was ineligible for preference immigrant classification based on that relationship, as required by subsections 204(a)(1)(B)(ii)(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, 375 (AAO 2010). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

³ Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II); Section 204(a)(1)(B)(ii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa).