



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 30 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



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 Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be 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-spouse.

The director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, finding that the petitioner did not establish that her spouse had subjected her to battery or extreme cruelty during their marriage. We dismissed the petitioner's subsequent appeal, finding no error in the director's decision. We also concluded that the petitioner had not demonstrated a connection between her divorce and any battery or extreme cruelty, and therefore had not established a qualifying spousal relationship that made her eligible for immediate relative classification. We later granted the petitioner's motion to reopen based on her submission of a new psychological report, but affirmed the denial of her petition because the evidence did not establish that she had suffered battery or extreme cruelty by her ex-spouse. Additionally, we noted that the petitioner had not addressed on motion our previous finding that she had not established a qualifying relationship and corresponding eligibility for immediate relative classification. Our prior decisions are incorporated here by reference.

The matter is again before us on a motion to reconsider. The petitioner submits a brief. The petitioner has not met the requirements of a motion to reconsider and her motion will be denied.

Battery or Extreme Cruelty

Section 204(a)(1)(A)(iii)(I)(bb) of the Act requires that the petitioner establish that she was battered or subjected to extreme cruelty by her U.S. citizen ex-spouse during their marriage. In her brief on motion, the petitioner contends that she has submitted sufficient evidence to show that she is a victim of domestic violence. She states that even if we have "some doubt as to the truth, the petitioner submitted relevant, probative, and credible evidence" to demonstrate by a preponderance of the evidence that she was battered by her husband. The petitioner contends that she "has presented two supporting authorities" to support her claim, and that we erred in basing our dismissal on a finding that the abuse she suffered was not extreme. She asserts that we must consider "all factors involving hardship" and cannot take "a restrictive view of extreme hardship" The petitioner further argues that "the burden has shifted to the Government to rebut her claims and the Government has offered no evidence to the contrary besides asking for more evidence"

The case the petitioner cites in support of her eligibility claim, *Matter of L-O-G-*, 21 I&N Dec. 413, 416 (BIA 1996), is inapplicable to the instant petition. *Matter of L-O-G-* involved an application for suspension of deportation under former section 244 of the Act, 8 U.S.C. § 1254, which required a showing that an alien's deportation would result in extreme hardship to the alien or his or her U.S. citizen or lawful permanent resident spouse, parent, or child. This case, however, does not involve a determination regarding whether the petitioner suffered extreme hardship. On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amended section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a

U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21. Rather, to determine whether a petitioner may be classified as an immigrant abused spouse pursuant to section 204(a)(1)(A)(iii)(I) of the Act involves consideration of whether the petitioner suffered battery or extreme cruelty at the hands of her U.S. citizen ex-spouse, as described in 8 C.F.R. § 204.2(c)(1)(vi). It requires a showing that the petitioner entered into marriage with the U.S. 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). Therefore, the petitioner's argument that she has established extreme hardship does not demonstrate that we erred in finding that she did not establish battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also asserts that the burden of proof has shifted to us to rebut the evidence she submitted. However, it is the petitioner who bears the burden of showing, by a preponderance of the evidence, that she is eligible for the benefit she seeks. 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, 376 (AAO 2010) (the truth is to be determined not by the quantity of evidence alone but by its quality). Although she correctly notes that we must consider any credible evidence as required by section 204(a)(1)(J)¹ of the Act, the burden does not shift to us once she has submitted a certain amount of evidence. Instead, section 204(a)(1)(J) of the Act provides that “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within [our] sole discretion”

As discussed in our previous decisions on appeal and on motion, we have considered all evidence in the record in our *de novo* review. The petitioner did not submit in the proceedings below any detailed, probative evidence of any instances of battery or extreme cruelty, and she provides no additional evidence on motion. Additionally, the petitioner has not addressed the inconsistencies in the evidence she previously submitted. Therefore, the preponderance of the relevant evidence does not establish that she suffered battery or extreme cruelty by her U.S. citizen ex-spouse as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

In our previous decisions on appeal and motion, we also discussed that the petitioner had not demonstrated a connection between her divorce and any battery or extreme cruelty. Therefore, we concluded that the petitioner had not established a qualifying relationship with her U.S. citizen ex-spouse or corresponding eligibility for immediate relative classification as required by sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act. The petitioner has not addressed this issue on motion.

¹ The petitioner incorrectly cites section 204(a)(1)(H) of the Act for this assertion.

Conclusion

The petitioner has not met the requirements for a motion to reconsider. She has not cited binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy, nor has she shown that our decision was incorrect based on the relevant evidence in the record at the time of the decision. Accordingly, we must deny the motion to reconsider. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

In these proceedings, the petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127; *Matter of Chawathe*, 25 I&N Dec. 369. Here, the petitioner has not met that burden. Accordingly, the motion will be denied.

ORDER: The motion is denied. The appeal remains dismissed and the petition remains denied.