



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-E-C-

DATE: SEPT. 30, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), concluding that, although the spouse of a U.S. citizen may file a VAWA petition up to two years following the U.S. citizen's death, there is no similar statutory provision for spouses of lawful permanent residents.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the governing VAWA statute does not prohibit the spouse of an abusive lawful permanent resident from seeking relief through the filing of a VAWA petition.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 204(a)(1)(B)(ii)(I) of the Act provides that an individual who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the individual demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the individual or the individual's child was battered or subjected to extreme cruelty perpetrated by the lawful permanent resident spouse. In addition, the individual must show that he or she is eligible to be classified as a spouse of an individual admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(I).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an individual:

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence

The eligibility requirements are further explicated in the regulation at 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child and must have taken place during the self-petitioner’s marriage to the abuser.

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

Evidence for a spousal self-petition –

(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.

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The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner married L-Z-,¹ a lawful permanent resident, in Mexico on [REDACTED] L-Z- committed suicide on [REDACTED]. The Petitioner filed her VAWA petition on August 18, 2015, more than six years after L-Z-'s death. The Director denied the VAWA petition, concluding that although the spouse of a U.S. citizen may file a VAWA petition up to two years following the U.S. citizen's death, there is no similar statutory provision for spouses of lawful permanent residents and, even if such a provision existed, L-Z- died more than two years before the Petitioner filed the VAWA petition. The Petitioner filed a timely appeal. We have reviewed all of the evidence in the record of proceedings.

III. ANALYSIS

A. Qualifying Relationship

L-Z- committed suicide and consequently lost his lawful permanent resident status upon his death. To remain eligible for classification under section 204(a)(1)(B)(ii) of the Act in a case such as this, the Petitioner must show that L-Z-'s suicide was "due to an incident of domestic violence" and that she filed her VAWA petition within two years of his death. *See* section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. The Act does not provide a definition for "domestic violence"; however, the term "battery or extreme cruelty," as used within the context of a VAWA petition, may constitute domestic violence. *See* 8 C.F.R. § 204.2(c)(1)(defining the term "battery or extreme cruelty"); *see also* 8 C.F.R. § 204.2(c)(2)(listing the types of evidence a petitioner may submit to demonstrate battery or extreme cruelty).

In the personal statement she submits with the VAWA petition, the Petitioner recounts that L-Z- physically abused and insulted her when he was drunk. She does not, however, mention L-Z-'s death, describe any connection between his death and his abuse of her, or indicate that his death affected her. The Petitioner submits statements from her children who report that L-Z- abused the Petitioner when he was drunk but they do not discuss any connection between his suicide and his abuse of the Petitioner. Only one of her children, J-I-C-, discusses the death of L-Z-, relating that L-Z- committed suicide shortly after he and L-Z- argued. The Petitioner also provides a letter from [REDACTED] LCSW, in which she writes that she provided individual counseling to the Petitioner in the spring of 2010 and recounts that the Petitioner "was coping with recent changes in her life and sought treatment to address the psychosocial stresses," but [REDACTED] does not mention L-Z-'s death or any connection between his death and his abuse of the Petitioner.

¹ Name withheld to protect the individual's identity.

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The Petitioner has not established that L-Z-'s death was due to an incident of domestic violence. There is no indication in the record of proceedings that L-Z- ever threatened to kill himself, or that he used such threats to exert power and control over the Petitioner. *See* 8 C.F.R. § 204.2(c)(1). Accordingly, the Petitioner has not demonstrated that L-Z-'s loss of permanent resident status was due to an incident of domestic violence as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act.

The Petitioner also asserts in the brief she files on appeal that the two-year filing deadline is a statute of limitations subject to equitable tolling. However, she cites no binding authority in support of her argument. In particular, the Petitioner cites *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D.Colo. 2011); that decision is not precedential, as we are not bound to follow the published decisions of United States district courts. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). While several courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation proceedings, the Petitioner does not cite precedential decisions finding visa petition filing deadlines subject to equitable tolling. *Compare Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005) (holding that the time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) *with Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (finding that a deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). Accordingly, the two-year, post-termination filing period of section 204(a)(1)(B)(ii)(II)(aa) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive this statutory deadline.

In addition, even if the Petitioner had established that L-Z-'s death was due to an incident of domestic violence and the resultant loss of his lawful permanent residency, L-Z- died more than six years before the Petitioner filed the VAWA petition and, accordingly, she did not timely file the VAWA petition, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act.

B. Eligibility for Immigrant Classification

As the Petitioner has not established a qualifying spousal relationship based on her marriage to L-Z-, she necessarily has also not demonstrated her corresponding eligibility for preference classification under section 203(a)(2)(A) of the Act, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

C. Good Moral Character

Primary evidence of a petitioner's good moral character is his or her affidavit. *See* 8 C.F.R. § 204.2(c)(2)(v). An affidavit should be accompanied by a police clearance from each place a petitioner has resided for six or more months during the three-year period immediately preceding the filing of the VAWA petition. *Id.* The Petitioner did not attest to her good moral character in her personal statement and she did not submit police clearances from each place she has resided for six or more months during the three-year period immediately preceding the filing of the VAWA petition. The Petitioner submits with the VAWA petition an extract from criminal records maintained by a district court in [REDACTED]

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█ Idaho, which does not comport with the regulation at 8 C.F.R. § 204.2(c)(2)(v). Accordingly, beyond the decision of the Director, we find that the Petitioner did not submit sufficient evidence to establish that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

IV. CONCLUSION

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.

ORDER: The appeal is dismissed.

Cite as *Matter of M-E-C-*, ID# 8330 (AAO Sept. 30, 2016)