U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JAN 0 9 2013 Office: VERMONT SERVICE CENTER File: [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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The 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 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 his U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner has a qualifying relationship with a United States citizen and is eligible for immigrant classification based upon that relationship. On appeal, counsel reasserts the petitioner's eligibility and resubmits prior evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
>
> * * *
>
> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

(ii) *Legal status of the marriage*. . . . After the self-petition has been properly filed, . . . [t]he self-petitioner's remarriage . . . will be a basis for the denial of a pending self-petition.

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

Pertinent Facts and Procedural History

The petitioner is a citizen of Jordan who was admitted to the United States on September 15, 2000 as a B-1 nonimmigrant visitor for business. The petitioner wed T-G-[1], a U.S. citizen, on May 3, 2005 in Paterson City, New Jersey. The petitioner's marriage to T-G- dissolved in a divorce on December 9, 2010. The petitioner filed the instant Form I-360 on February 7, 2011. Subsequent to the filing of the Form I-360, he wed his second, current spouse, E-A-[2], a U.S. lawful permanent resident, in Paterson City, New Jersey on October 11, 2011. The director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's marital status. The petitioner, though counsel, timely responded to the RFE with additional evidence, including the final divorce decree for the dissolution of his marriage to T-G-, the subject of the instant Form I-360. He also provided a marriage certificate as evidence of his marriage to his current spouse, E-A-. The director denied the petition for failure to demonstrate the existence of a qualifying relationship with T-G- as well as his eligibility for immigrant classification as an immediate relative on the basis of such a relationship. Counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Because the petitioner remarried, the director denied the petition for failure to establish that the petitioner has a qualifying relationship with a United States citizen and was eligible for immigrant classification based upon that relationship pursuant to sections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

[1] Name withheld to protect the individual's identity.
[2] Name withheld to protect the individual's identity.

On appeal, counsel asserts that the director made a clerical error by stating that the petitioner's divorce from T-G- was on December 9, 2012. Counsel contends that since the petitioner's divorce was actually on December 9, 2010, one year prior to his marriage to his second wife, he had a qualifying relationship and can therefore demonstrate his eligibility for immigrant classification. Counsel resubmits the petitioner's divorce complaint, the final divorce decree for the termination of his first marriage, and the certificate of marriage for his second, current marriage.

Under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, a petitioner can file a Form I-360 within two years following the termination of a qualifying marriage if the petitioner can establish a connection between the legal termination of the marriage and the battery or extreme cruelty by the United States citizen spouse. The director, however, correctly concluded that in this case, although the petitioner filed his petition within the two-year deadline, he no longer had a qualifying relationship with T-G- because he remarried following their divorce. The regulations mandate that remarriage during the pendency of the Form I-360 precludes its approval. 8 C.F.R. § 204.2(c)(1)(ii); *See also* 8 C.F.R. § 205.1(a)(3)(i)(E)(requiring the automatic revocation of a Form I-360 approved under section 204(a)(1)(A)(iii) of the Act upon the self-petitioner's remarriage). The director's typographical error regarding the date of the petitioner's divorce did not prejudice the petitioner as the director correctly determined that it is the petitioner's remarriage, not the date of his divorce that renders him ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he had a qualifying relationship with his former spouse and is eligible for immediate relative classification based upon that relationship. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.