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: MAR 14 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Self-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:

[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 in accordance with the instructions on 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 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 finding that the petitioner had not established a qualifying relationship with a lawful permanent resident of the United States and was eligible for preference immigrant classification because of that relationship.

On appeal, the petitioner's accredited representative submits a brief statement on the Form I-290B and additional evidence.

Relevant Law and Regulations

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)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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 evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

> *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 . . . .

Pertinent Facts and Procedural History

The petitioner is a citizen of Costa Rica who entered the United States on June 26, 1998 as a visitor. The petitioner resided with , a former lawful permanent resident of the U.S., in New Jersey and Virginia from June of 2000 to July of 2006. The petitioner filed the instant Form I-360 on October 26, 2010 stating that she was in a common law marriage with The director subsequently issued a Request for Evidence (RFE) that, *inter alia*, the petitioner resided with in a state that recognized common law marriages. The petitioner, through her representative, timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the evidence submitted on appeal have not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship Corresponding Eligibility for Immigrant Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship. On her Form I-360, the petitioner listed "common law" in the space designated for the date and place where the petitioner and were married but did not submit evidence to support this assertion. In the RFE, the director correctly noted that the states of New Jersey and Virginia do not recognize common law marriages and requested evidence that the petitioner resided with in a state that does, along with evidence that they met the state's common law marriage requirements. In response to the RFE, the petitioner submitted her children's birth certificates and a copy of someone else's marriage certificate listing her and as witnesses. The evidence submitted failed to show that she resided with in a state that recognizes common law marriages.

On appeal, counsel argues that the petitioner believed that her common law marriage to was lawful and also recently discovered that had legalized their marriage in Costa Rica. As evidence, the petitioner submits a self-affidavit stating that during her pregnancy, had her sign a document that legalized their marriage in Costa Rica although she did not know it at the time. The petitioner asserts that she only recently discovered this after mother told her she found a marriage certificate for the petitioner and amongst belongings on Christmas day in 2011. The petitioner asserts that she is therefore legally married to under Costa Rican law. She also argues that common law marriages are valid in Costa Rica and that their marriage is

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

recognized in Costa Rica. In her January 6, 2012 letter submitted on appeal, the petitioner's representative stated that she would submit within 30 days the Costa Rican marriage certificate of the petitioner and To date, over a year later, the AAO has not received a marriage certificate from Costa Rica or other evidence that Costa Rican marital laws recognize her union with as a common law marriage when the petitioner and did not ever reside together in Costa Rica. Therefore the petitioner has not established that she had a qualifying spousal relationship with a lawful permanent resident of the United States and was eligible for preference immigrant classification based on such a relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.

Further, to remain eligible for classification under section 204(a)(1)(B)(ii) of the Act in a case such as this, a self-petitioner must show that his or her spouse "lost status within the past 2 years due to an incident of domestic violence." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa). A review of the administrative record shows that the petitioner filed the instant Form I-360 more than two years after loss of status. Even if the petitioner established that she had a qualifying spousal relationship with she failed to file her self-petition within two years of loss of status the statute provides no exception to the two-year filing deadline.

Conclusion

On appeal, the petitioner has not overcome the director's grounds for denial and she is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

In these proceedings, 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.