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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

[redacted]

Date: FEB 0 6 2014 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director, ("the director"), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on motions to reopen and reconsider. The motion to reconsider will be granted. The appeal will remain dismissed and the petition will remain 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 former spouse, a United States citizen.

The director revoked approval of the Form I-360 petition on September 27, 2012 on the basis of his determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a U.S. citizen and was eligible for immigrant classification based upon that relationship because she remarried while the Form I-360 was still pending. In its October 10, 2013 decision on appeal, the AAO affirmed the director's decision.

On motion, the petitioner, through counsel, submits a brief and evidence previously submitted on appeal. Counsel again requests oral argument before the AAO, stating that this matter involves "an issue of national importance."

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

> The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by his under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.1 states, in pertinent part, the following:

> (a) Reasons for automatic revocation. The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:
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> * * *
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> (3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final:
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> (i) Immediate relative and family-sponsored petitions, other than Amerasian petitions.
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> * * *
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> (E) Upon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for immediate relative classification

under section 201(b) of the Act or for preference classification under section 203(a)(2) of the Act.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

> Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

Section 204(a)(1)(A)(iii)(I) 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).

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 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.
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> (ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. . . .

Regarding a qualifying spousal relationship for a self-petitioner, the regulation at 8 C.F.R. § 204.2(c)(1)(ii) further states, in pertinent part, "The self-petitioner's remarriage . . .will be a basis for the denial of a pending self-petition."

Pertinent Facts and Procedural History

The petitioner, a citizen of Pakistan, married A-P-[1], a United States citizen, on February 14, 2008 and the two were divorced on December 22, 2008. The petitioner subsequently married R-V-[2] on August 20, 2009 in , Georgia. This marriage was later annulled on February 20, 2013 pursuant to Georgia state law. The petitioner filed the instant Form I-360 on November 25, 2008 and it was approved on July 27, 2010. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on January 30, 2012, and notified the petitioner that evidence contained in the record as well as statements made by the petitioner during her adjustment of status interview indicated that the petitioner had remarried prior to the approval of her Form I-360. The petitioner, through counsel, submitted a timely response which the director found insufficient to overcome his proposed grounds for revocation and revoked approval of the petition on September 27, 2012. Counsel timely filed a motion to reconsider.[3]

Counsel's brief meets the requirements of a motion to reconsider and is granted. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's grounds for revocation. The appeal will remain dismissed and approval of the petition will remain revoked for the following reasons.

Request for Oral Argument

Counsel again requests oral argument before the AAO, reiterating that the issues present in the petitioner's case are of national importance. U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the written record of proceeding fully represents the facts and issues in this matter, and there is no explanation why any facts or issues in this matter, whether novel or not, have not and cannot be adequately addressed in writing. Consequently, the request for oral argument is denied.[4]

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

In its October 10, 2013 decision, the AAO affirmed the director's determination that the petitioner failed to establish that she had a qualifying relationship with a United States citizen and was eligible for

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

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

[3] The Form I-290B indicates that the petitioner is filing a motion to reconsider. Counsel's brief, however, indicates that the petitioner is filing a motion to reopen and a motion to reconsider. Accordingly, the Form I-290B will be treated as a motion to reopen and a motion to reconsider.

[4] Counsel states on motion that the AAO has not published a precedent decision since 1998 to guide USCIS adjudicators. However in 2012, the AAO published *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012), a precedent decision binding on all USCIS adjudicators in their administration of the Act. See 8 C.F.R. § 103.3(c).

immediate relative classification based on that relationship. The regulation at 8 C.F.R. § 204.2(c)(1)(ii) specifically states that remarriage prior to adjudication of a self-petition is a basis for denial. The regulation at 8 C.F.R. § 205.1(a)(3)(i)(E) further provides that the approval of a self-petition for an abused spouse is automatically revoked if the self-petitioner remarries prior to his or her journey to the United States or a decision on the application for adjustment of status (Form I-485) becomes final. On motion, counsel resubmits the petitioner's Final Judgment and Decree of Annulment and reasserts that approval of the petitioner's Form I-360 should not be revoked because the petitioner's marriage to R-V- was annulled. He asserts that since no remarriage legally exists, the director erroneously revoked approval of her Form I-360. To support his argument, counsel relies on *Matter of Samedi*, 14 I&N Dec. 625 (BIA 1974) and includes a copy of the decision with the motion. In *Matter of Samedi*, the respondent's lawful permanent resident status based on his marriage to a U.S. citizen was rescinded because his former spouse had the marriage annulled. The Board of Immigration Appeals (BIA) ruled that the relation-back doctrine applied to all annulments in California, irrespective of the ground for annulment and whether immigration fraud was involved.

However, in a subsequent decision by the BIA, also submitted by counsel on motion, the BIA held that "the relation back doctrine, as set forth in Matter of Samedi, supra, cannot be applied blindly where to do so would result in a gross miscarriage of justice." *See Matter of Castillo-Sedano*, 15 I. & N. Dec. 445, 446 (BIA 1975). In *Matter of Wong*, 16 I&N Dec. 87 (BIA 1977), the BIA held that "[a]lthough the annulment might be given retroactive effect by the California court annulling the marriage ab initio, it will not be given retroactive effect for immigration purposes." *See In Matter of Wong*, 16 I.&N. Dec. 87, 89 (BIA 1977); *See also Hendrix v. U.S. INS*, 583 F.2d 1102, 1103 (a Ninth Circuit case affirming the BIA's decision in *Matter of Wong*). In the context of adjudicating applications for immigration benefits, the "relation-back doctrine" which treats the marriage as if it had never existed, does not have to be applied in every case where a marriage has been annulled. *See Garcia v. INS*, 31 F. 3d 441, 441 (7th Cir. 1994); *Matter of Magana*, 17 I&N Dec. 111, 111 (BIA 1979); *Delmas v. Gonzalez*, 422 F. Supp 2d 1299 (S.D. Fla. 2005).

In its prior decision, the AAO noted that in subsequent amendments to the original Violence Against Women Act (VAWA) statutory provisions at section 204 of the Act, Congress has left alone USCIS interpretation that remarriage prior to petition approval requires denial.[5] The legislative history supports USCIS interpretation that remarriage at any point prior to filing or while the Form I-360 is pending negates the need for VAWA protection. *See Delmas v. Gonzalez*, 422 F.Supp. 2d 1299 (S.D. Fla. 2005) (alien's remarriage prior to filing self-petition was disqualifying). Retroactive effect should not be given to an annulment where the application of the relation-back doctrine would go against "the purpose and intent of immigration law." *See Garcia v. INS* at 441. In the instant case, to apply the relation-back doctrine would go against the intent of Congress in declining to extend eligibility to self-petitioners who divorce their abusers and remarry prior to the approval of their Form I-360 petitions. Accordingly, the petitioner's annulment does not negate the application of 8 C.F.R. 204.2(c)(1)(ii).

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[5] *See Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 9(Oct. 28, 2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, (VAWA 2005); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (VAWA 2013).

Alternatively, counsel argues that the director and the AAO failed to consider the "humanitarian exception" at 8 C.F.R. § 205.1(a)(3)(i)(C)(2) in revoking the petitioner's Form I-360.[6] Counsel is incorrect. The AAO, in its October 10, 2013 decision, considered the petitioner's request and determined that there is no exception to the remarriage disqualification at 8 C.F.R. § 204.2(c)(1)(ii). Counsel repeatedly cites to a humanitarian exception found at 8 C.F.R. § 205.1(a)(3)(i)(C)(2) which does not pertain to Form I-360 self-petitions, but rather to Form I-130 Petitions for Alien Relative where the petitioner is deceased. That regulation states that in the event of the death of a petitioner, USCIS can exercise its discretion and not automatically revoke the visa petition for humanitarian reasons. There is no like provision for self-petitioners who, as in the instant case, remarry prior to the adjudication of the Form I-360 and subsequently are unable to establish that they have a qualifying relationship with an abusive U.S. citizen. To the contrary, the regulation at 8 C.F.R § 205.1(a)(3)(i)(E) requires the automatic revocation of a Form I-360 "upon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States . . . ."

The petitioner's remarriage to a non-abusive spouse while this petition was pending, notwithstanding the fact that it was later annulled, demonstrates that she no longer qualifies for VAWA protection. Accordingly, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act due to her divorce from A-P- and her remarriage to R-V- while this petition was pending.

Conclusion

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will remain dismissed and the approval of the petition will remain revoked for the reasons stated above.

ORDER: The motion is granted. The October 10, 2013 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition's approval remains revoked.

[6] In his briefs below and on motion, counsel incorrectly cites to the humanitarian exception at 8 C.F.R. § 205.1(a)(3)(2). The correct cite, as used in this decision, is 8 C.F.R. § 205.1(a)(3)(i)(C)(2).