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U.S. Citizenship
and Immigration
Services

Date: **SEP 22 2014** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-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:

SELF-REPRESENTED

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 acting director, (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 under 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 a United States citizen.

The director denied the petition for failure to establish a qualifying relationship with her U.S. citizen former spouse and corresponding eligibility for immediate relative classification based on that relationship. The director also denied the petition for failure to establish that the petitioner is a person of good moral character and was subjected battery or extreme cruelty by her U.S. citizen spouse.

On appeal, the petitioner submits a supplemental statement and copies of documents previously submitted.

Relevant Law and Regulations

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). An alien who was the bona fide spouse of an abusive United States citizen who died within the past two years may still file a self-petition under this provision of the Act. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(aaa). 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:

(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 . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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.

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner, a citizen of Lithuania, first entered the United States on March 28, 2001, as a nonimmigrant visitor. The petitioner married G-P-¹, a U.S. citizen, on March 27, 2002, in Illinois. The petitioner and G-P- were divorced on June 8, 2006, and G-P- subsequently died on August 24, 2008. The petitioner filed the instant Form I-360 self-petition on September 5, 2012. The director found the record insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner's claims and the new evidence submitted on appeal fail to overcome the grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director correctly determined that the petitioner had not established a qualifying relationship with G-P- because G-P- died on August 24, 2008, and the petitioner's Form I-360 self-petition was not filed until more than four years later on September 5, 2012. The petitioner is also unable to establish a qualifying relationship with G-P- because they divorced on June 8, 2006, more than six years prior to the submission of her Form I-360 self-petition. On appeal, the petitioner states that she initially filed a self-petition on March 27, 2006 prior to her divorce from G-P- and she never knew why it was denied because she lost touch with her prior attorney. The administrative record shows that the petitioner's first self-petition was denied on July 28, 2009 and the petitioner did not appeal that decision.² The instant self-petition was not filed within two years of the petitioner and G-P-'s divorce or within two years of G-P-'s death. The petitioner consequently had no qualifying relationship with G-P- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) or (ccc) of the Act and is

¹ Name withheld to protect the individual's identity.

² The receipt number for the petitioner's previously submitted Form I-360 self-petition is

ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Battery or Extreme Cruelty

The director determined without discussion or analysis that the petitioner did not establish that her former husband subjected her to battery or extreme cruelty. Upon de novo review, the relevant evidence demonstrates that the petitioner was subjected to battery and extreme cruelty by her former husband. In her July 14, 2011 declaration, the petitioner stated that in his twenties, G-P- became addicted to illegal drugs and alcohol due to health issues. She stated that while under the influence of drugs, G-P- became abusive and she credibly described specific instances of sexual assault and marital rape. She stated that he also regularly verbally abused her and used all of their money to buy drugs. She stated that as a result, she suffers from depression and anxiety. The petitioner's statement provided a detailed and credible account of the physical, emotional, and sexual violence she suffered during her marriage to G-P-. The petitioner also submitted evidence to show that she received regular, long-term domestic violence counseling from the [REDACTED]. Accordingly, the petitioner has established that her former husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act and that portion of the director's decision is withdrawn.

Good Moral Character

The director correctly determined that the petitioner failed to establish that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in September 2009 and ending in September 2012).

The petitioner did not discuss her moral character in either of her affidavits submitted with her self-petition. As evidence of her good moral character, the petitioner resubmitted copies of local police clearances from the [REDACTED], Illinois police departments that were originally submitted with her first I-360 self-petition. These reports are dated June 25, 2009. In addition, the petitioner submitted a clearance report dated August 20, 2012, from [REDACTED] a company that conducted an online search for the petitioner's criminal history. The police department reports are outdated and beyond the three year period immediately preceding the filing of this self-petition. The online criminal history check is not a local police clearance nor is it a state issued criminal background check. The evidence submitted is therefore insufficient to establish her good moral character. On appeal, the petitioner states that she has not broken any laws or committed any crimes but she does not explain her failure to submit the requisite police clearances or state-issued criminal background check. Accordingly, the petitioner has failed to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has demonstrated that she was subjected to battery or extreme cruelty by her former husband. However, she has not established on appeal that she has a qualifying relationship with a U.S. citizen, is eligible for immediate relative classification based on that relationship, and is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.