

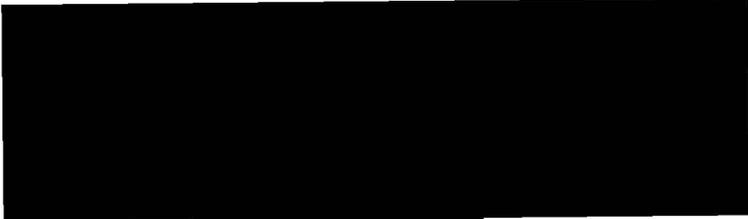


U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 05 108 53623

Office: VERMONT SERVICE CENTER

Date: JUN 12 2006

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant 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 subjected to battery or extreme cruelty by her United States citizen spouse.

The director denied the petition due to the petitioner's lack of a qualifying relationship with a U.S. citizen at the time the petition was filed.

On appeal, counsel submits a brief and additional evidence.

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 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).

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, an alien who has divorced an abusive United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a United States citizen within the past 2 years and –

\* \* \*

(ccc) who 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) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

The petitioner in this case is a native and citizen of Canada who was last paroled into the United States on March 4, 2004 with authorization to remain until March 18, 2004. On August 2, 2001, the petitioner married [REDACTED] a U.S. citizen in Phoenix, Arizona. The couple was divorced on November 22, 2002. The petitioner filed this Form I-360 on March 7, 2005.

An attorney who was later suspended from the practice of law by her state bar and suspended from practice before the Executive Office for Immigration Review (EOIR) previously represented the petitioner. The instant petition was preceded by multiple, unsuccessful attempts by former counsel to file a Form I-360. The petitioner's first Form I-360 (EAC 04 103 51317) was rejected on February 26,

2004 for failure to pay the correct fee. On April 22, 2004, Citizenship and Immigration Services (CIS) issued a second rejection notice for failure to pay the correct fee (EAC 04 149 51292). Prior counsel resubmitted the Form I-360 with a check, which CIS received on April 28, 2004. CIS issued a receipt notice dated May 11, 2004 for this petition (EAC 04 162 54900), but then rejected the petition on May 12, 2004 because the check was not made out for the proper fee. On June 4, 2004, CIS again rejected the Form I-360 sent by former counsel because the check was not made out for the newly increased fee amount. CIS issued two subsequent rejection notices for improper fees on July 12, 2004 and August 10, 2004. On September 3, 2004, CIS issued a receipt notice and prima facie case determination notice for the Form I-360 (EAC 04 241 52500). However, on September 13, 2004, CIS issued a notice to former counsel stating that former counsel's check had bounced and that the petition would be rejected if proper payment was not received within 14 days. Over a month later, on October 28, 2004, CIS rejected the petition because proper payment was not received within the allotted time.

The instant petition was properly filed on March 7, 2005, over two years after the petitioner was divorced from Mr. [REDACTED]. On appeal, counsel contends that this petition should be considered a reaffirmation of the original petition, which counsel claims was filed within two years of the petitioner's divorce on April 28, 2004 because CIS issued a receipt notice for that petition (EAC 04 162 54900). Counsel analogizes the petitioner's situation to that of asylum applicants, who may be exempted from the one-year filing deadline due to "extraordinary circumstances" and claims that the doctrine of equitable tolling should apply and that the petitioner should not be held responsible for the ineffective assistance of former counsel. Counsel submits various documents regarding the previous filing attempts and evidence that former counsel has been disciplined by EOIR.

Although the petitioner received ineffective assistance from former counsel, we are not persuaded by present counsel's claims that the doctrine of equitable tolling applies in this case and we are unable to consider the instant petition a reaffirmation of the previously rejected petition. In addition, beyond the decision of the director, the record does not establish that Mr. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage or that the petitioner entered into their marriage in good faith. Nonetheless, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

#### *Ineffective Assistance of Counsel*

An appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The Ninth Circuit Court of Appeals, within whose jurisdiction this petition arose, has held that strict adherence to *Lozada* is not required when the record clearly shows the ineffective assistance of counsel. See *Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9<sup>th</sup> Cir. 2000) (deportation hearing transcript showed immigration judge's own confusion over alien's representation by counsel and alien equivocally answered immigration judge's question of whether she wanted counsel, whom had never met before, to represent her); *Castillo-Perez v. I.N.S.*, 212 F.3d 518, 526 (9<sup>th</sup> Cir. 2000) (record of proceedings documented prior counsel's failure to timely file alien's application for suspension of deportation); *Ontiveros-Lopez v. I.N.S.*, 213 F.3d 1121 (9<sup>th</sup> Cir. 1999) (record showed that former counsel conceded alien's deportability, sought relief for which the alien was statutorily ineligible and that new counsel could not comply with *Lozada* given his late receipt of the alien's file).

In this case, the record clearly demonstrates former counsel's ineffective assistance. The record documents seven previous attempts to file a Form I-360 for the petitioner that were rejected due to a missing, incorrect fee or a bounced check. Former counsel submitted all but the first of these previously rejected petitions. Former counsel did not properly file the instant petition until March 7, 2005, nearly four months after the two-year anniversary of the petitioner's divorce, thus rendering the petitioner statutorily ineligible for the immigration benefit she seeks. Moreover, no purpose would be served by complying with the second and third *Lozada* requirements in this case because former counsel has already been suspended from the practice of law by her state bar<sup>1</sup> and EOIR.

#### *Equitable Tolling*

Although the record demonstrates the ineffective assistance of former counsel, present counsel does not persuasively establish that the two-year limitation of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is subject to equitable tolling and, if so, that the petitioner warrants such equitable action.

The equitable tolling doctrine is presumed to apply to every federal statute of limitation. *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946); *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1188 (9<sup>th</sup> Cir. 2001). However, not every statutory time limit is a statute of limitations subject to equitable tolling. A crucial distinction exists between statutes of limitation and statutes of repose. *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9<sup>th</sup> Cir. 2003). A statute of limitations limits the time in which a plaintiff may bring suit after a cause of action accrues. A statute of repose, in contrast, "cuts off a cause of action at a certain time irrespective of the time of accrual of the cause of action." *Weddel v. Sec'y of H.H.S.*, 100 F.3d 929, 931 (Fed. Cir. 1996). Statutes of repose are not subject to equitable tolling. *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991); *Weddel v. Sec'y of H.H.S.*, 100 F.3d at 930-32.

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<sup>1</sup> Counsel states, but does not document, former counsel's state suspension. We take administrative notice of the fact that the Supreme Court of Arizona suspended former counsel, [REDACTED] from the practice of law for a period of four years, retroactive to March 23, 2005. *In Re Dorothea P. Kraeger*, <http://www.supreme.state.az.us/clerk/2006%20Judgments/SB050176D.pdf> (Ariz. March 14, 2006).

The immigration laws contain statutes of limitations that are subject to equitable tolling as well as statutes of repose, which are not. For example, several federal circuits have held that the 90 and 180 day filing deadlines for motions to reopen removal (or deportation) proceedings are statutes of limitations subject to equitable tolling. See *Socop-Gonzalez*, 272 F.3d at 1187-90; *Iavorski v. I.N.S.*, 232 F.3d 124,134 (2<sup>nd</sup> Cir. 2000); *Riley v. I.N.S.*, 310 F.3d 124, 135 (10<sup>th</sup> Cir. 2002); *Borges v. Gonzalez*, 402 F.3d 398, 406 (3d Cir. 2005); *Pervaiz v. Gonzales*, 405 F.3d 488 (7<sup>th</sup> Cir. 2005). Yet the Eleventh Circuit Court of Appeals has held that the filing deadlines for motions to reopen deportation and removal proceedings are mandatory and jurisdictional and consequently not subject to equitable tolling. *Abdi v. U.S. Atty Gen.*, 430 F.3d 1148, 1150 (11<sup>th</sup> Cir. 2005); *Anin v. Reno*, 188 F.3d 1273, 1278 (11<sup>th</sup> Cir. 1999). In addition, the Ninth Circuit has held that the filing deadline for special rule cancellation under the Nicaraguan Adjustment and Central American Relief Act (NACARA) is a statute of repose not subject to equitable tolling, *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9<sup>th</sup> Cir. 2003), but has held that the time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling, *Albillo-De Leon v. Gonzalez*, 410 F.3d 1090, 1098 (9<sup>th</sup> Cir. 2005).

Counsel provides no basis upon which to conclude that the two-year, post-divorce filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of limitations subject to equitable tolling and counsel presents no claims as to why this portion of the Act is comparable to other immigration statutes that federal circuit courts have found subject to equitable tolling.

### *Due Diligence*

Even if section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of limitations subject to equitable tolling, the record does not demonstrate that the petitioner is entitled to such equitable relief. Ineffective assistance of counsel may be a basis for equitably tolling an immigration statute of limitations. See e.g. *Iavorski v. I.N.S.*, 232 F.3d at 134; *Mahmood v. Gonzales*, 427 F.3d 248, 251 (3<sup>rd</sup> Cir. 2005); *Pervaiz v. Gonzales*, 405 F.3d at 490-91; *Lopez v. I.N.S.*, 184 F.3d 1097, 1098 (9<sup>th</sup> Cir. 1999). However, to warrant equitable tolling, an alien must demonstrate that he or she exercised due diligence in pursuing the case during the period sought to be tolled. *Iavorski v. I.N.S.*, 232 F.3d at 135; *Albillo-De Leon v. Gonzalez*, 410 F.3d at 1099-100. Despite counsel's assertions, the record contains no evidence that the petitioner exercised due diligence.

On appeal, counsel claims the petitioner "acted with due diligence as evidenced by the number of filings and the correspondence in trying to get the application accepted by the VAWA Unit" and submits copies of documents evidencing former counsel's attempts to file a Form I-360 on the petitioner's behalf. Although the record documents former counsel's ineffective assistance, the record contains no evidence of the petitioner's own actions regarding her case. On appeal, the petitioner submits no evidence or explanation of her agreement with former counsel; does not state whether she was previously aware of the repeated rejections of former counsel's submissions; and does not indicate whether she knew of the two-year filing deadline of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. Without evidence of when and how the petitioner became aware of prior counsel's mistakes and the

petitioner's own subsequent actions, we cannot conclude that she exercised due diligence that would merit equitable tolling of the two-year deadline. *Cf. Mahmood v. Gonzales*, 427 F.3d at 252 (alien did not demonstrate due diligence where the record contained no evidence of his actions during two significant periods, each exceeding one year, in the procedural history of the case).

*Prior Rejected but Received Petition*

Counsel also fails to demonstrate why the instant petition should be considered a reaffirmation of the earlier petition (EAC 04 162 5490), for which CIS issued a receipt, but later rejected. The relevant regulation at 8 C.F.R. § 204.2(h)(2) states, in pertinent part:

Subsequent petition by same petitioner for same beneficiary. . . . A new self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act will not be regarded as a reaffirmation or reinstatement of the original self-petition unless the prior and the subsequent self-petitions are based on the relationship to the same abusive citizen or lawful permanent resident of the United States.

Contrary to counsel's assertion, CIS' issuance of a receipt notice did not perfect the filing of the earlier petition. In fact, the day after it issued the receipt notice, CIS issued a rejection notice due to an incorrect or missing fee. Petitions which are submitted with the wrong fee shall be rejected as improperly filed and rejected petitions, as well as those accompanied by a check which is later returned as non-payable, do not retain a filing date. 8 C.F.R. § 103.2(a)(7). Counsel claims that the earlier petition was "erroneously rejected because [CIS] had accepted the filing" by issuing a receipt notice and that "[t]o otherwise disregard this would constitute failure by the agency to follow its own regulations." To the contrary, CIS properly rejected the petition pursuant to the regulation at 8 C.F.R. § 103.2(a)(7). Because the earlier petition was never properly filed, we cannot consider the instant petition as a reaffirmation or reinstatement of that petition pursuant to the regulation at 8 C.F.R. § 204.2(h)(2).

*Battery or Extreme Cruelty*

Beyond the director's decision, the current record also fails to establish that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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

\* \* \*

(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.

The petitioner submitted the following evidence of battery or extreme cruelty: a photocopy of her handwritten personal statement; a "VAWA checklist" of types of abuse, which was prepared by former counsel and signed by the petitioner; a letter from the petitioner's former counselor, Dr. [REDACTED]; letters from the petitioner's mother and friend; and electronic mail messages sent to the petitioner by Mr. [REDACTED]. The director did not discuss this evidence, which we find does not establish the requisite battery or extreme cruelty.

The photocopy of the petitioner's personal statement is cut off on the right margin, leaving much of her statement illegible. In the legible portions of her statement, the petitioner writes that her ex-husband was "a controlling alcoholic who was still bitter with his first wife and taking that out on me." The petitioner reports that Mr. [REDACTED] told her she was stupid and called her unspecified names. She states that Mr. [REDACTED] was possessive and told her he would lock her out if she did not come home; that he always wanted her to stay home on the weekends when he was working night shifts; and that he was very controlling and tried to isolate her. The petitioner further reports that Mr. [REDACTED] threatened to get her deported, took the wheels off of her bicycle so she could not ride it, cancelled her doctor's appointment after a fight, took "the wedding ring back to get his money

back,” and tried to scare her by “saying things like if you don’t come home soon I’m going to get a divorce.” The petitioner also states, “When I said no he locked me out of the hotel or forced sexual activity.”

On the “VAWA checklist” prepared by former counsel, the petitioner indicates that Mr. [REDACTED] pushed, shoved, and choked her and that he raped her before they were married. She further indicates that Mr. [REDACTED] was a former Marine, grabbed her by the neck and said he knew how to kill. The petitioner indicates that Mr. [REDACTED] sexually abused her by, *inter alia*, making demeaning sexual remarks about women, told her she was not good in bed, had extramarital affairs, and once pulled up her shirt in a public restaurant. The petitioner indicates that Mr. [REDACTED] emotionally abused her by, *inter alia*, calling her stupid when she got a flat tire, keeping his dead cat in the bathtub for two days, refusing to socialize with her and threatening to leave or telling her to leave on two or three occasions. The petitioner also states that Mr. [REDACTED] isolated her by threatening to lock her out if she came home late and by going through her bank statements.

The petitioner’s personal statement is partially illegible and her “VAWA checklist” is a form that contains the petitioner’s signature, but was not written by her. These documents fail to establish battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe particular incidents in any probative detail and her statements do not establish that Mr. [REDACTED] sexually or psychologically abused her. The petitioner also does not indicate that Mr. [REDACTED]’s nonviolent actions were part of an overall pattern of violence. Although Mr. [REDACTED]’s electronic mail messages confirm that he threatened to call immigration authorities to have the petitioner deported, the record does not corroborate any of the petitioner’s other statements regarding Mr. [REDACTED]’s alleged abuse.

In her letter dated August 23, 2002, Dr. [REDACTED] states that the petitioner saw her for eight counseling sessions between December 4, 2001 and March 12, 2002. Dr. [REDACTED] states, “During this time [the petitioner] repeatedly reported serious marital conflict. She described her husband as an alcoholic who drank daily. She also reported feeling that her husband was ‘controlling’ and attempting to ‘blackmail’ her with threats of divorce.” Dr. [REDACTED] reports that the petitioner “experienced much stress and frustration” and that the petitioner lost hope for her marriage “due to her husband’s repeated drinking and disrespect.” Dr. [REDACTED] provides no professional analysis of the petitioner’s mental health. She also does not state, for example, that the petitioner’s reported marital conflict rose to the level of battery or extreme cruelty or that the petitioner’s behavior or affect, as observed by Dr. [REDACTED] was consistent with having survived domestic violence.

In her letter dated March 13, 2004, the petitioner’s mother, [REDACTED] states that the petitioner called her a couple of times around December 2001 and told her about her marital problems. Ms. [REDACTED] does not indicate that she ever witnessed Mr. [REDACTED] physically assault the petitioner or subject the petitioner to extreme cruelty. Ms. [REDACTED] also does not state, for example, that she observed effects of Mr. [REDACTED]’s alleged abuse through changes in the petitioner’s physical or mental health.

In her unsigned letter dated March 21, 2004, [REDACTED], the petitioner's friend, describes Mr. [REDACTED] behavior as related to her by the petitioner. Ms. [REDACTED] (who lives in Canada) states that she once visited the petitioner in the Fall of 2001 and the petitioner confided in her, but Ms. [REDACTED] does not state that she witnessed Mr. [REDACTED] abuse the petitioner at that time. Ms. [REDACTED] reports receiving telephone calls from the petitioner on several occasions when the petitioner said that Mr. [REDACTED] locked her out. Ms. [REDACTED] states that the petitioner was "forced to live at the drop-zone and in her car" and explains that she visited the "drop-zone" when she was in Arizona and knew it was not a safe place. Ms. [REDACTED] also discusses significant issues that the petitioner does not address in her own statement. For example, Ms. [REDACTED] states that Mr. [REDACTED]'s drinking "was especially traumatic for [the petitioner] because [he] would drink and drive and her brother had been killed by a drunk driver." Yet Ms. [REDACTED] does not report ever witnessing Mr. [REDACTED] driving while intoxicated. Accordingly, the letters of the petitioner's mother and Ms. [REDACTED] do not corroborate the petitioner's claim or independently establish Mr. [REDACTED]'s battery or extreme cruelty.

The petitioner submitted no other documents of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner states, "I called the womens caliti [sic] the first time after he had asked me to leave," but she provides no documentation that she received assistance from a domestic violence agency or similar entity. The petitioner also provides no corroborative documentation or testimonial evidence of Mr. [REDACTED] purported physical abuse. The petitioner does not state that she ever called the police or took legal steps to end Mr. [REDACTED] alleged abuse and she does not indicate that Mr. [REDACTED] threatened to harm her if she contacted the police or that she was otherwise fearful of reporting the abuse. As discussed above, the letters of Dr. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] do not corroborate the petitioner's claims of battery and extreme cruelty. The current record thus fails to establish that Mr. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act.

#### *Entry Into the Marriage in Good Faith*

Beyond the director's decision, the present record also fails to establish the petitioner's good faith entry into marriage with Mr. [REDACTED]. The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in pertinent part:

*Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for establishing good faith entry into the marriage are contained in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), which states:

*Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies,

property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible evidence will be considered.

In her personal statement, the petitioner writes, "I married in good faith hoping we could start our life over together in happiness." The petitioner does not further discuss how she met Mr. [REDACTED] their courtship, wedding, joint residence or shared experiences, apart from Mr. [REDACTED] alleged abuse. The petitioner submitted a copy of the Forms I-130 and I-864 filed by Mr. [REDACTED] on the petitioner's behalf, but these documents do not establish the petitioner's own good faith in marrying Mr. [REDACTED]. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Although she is not required to do so, the petitioner does not explain why such documents do not exist or are unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). Accordingly, the current record fails to establish that the petitioner entered into her marriage with Mr. Taylor in good faith, as required by section 204(a)(1)(A)(iii) of the Act.

The present record does not demonstrate that the petitioner had a qualifying relationship with an abusive U.S. citizen at the time this petition was filed pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. Counsel fails to establish that this section of the Act is a statute of limitations that is subject to equitable tolling and that the petitioner exercised due diligence, thus meriting such equitable action. Beyond the director's decision, the present record also does not demonstrate that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage and that the petitioner entered into their marriage in good faith. The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

Nonetheless, the case will be remanded because the director failed to issue a NOID before denying the petition. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.