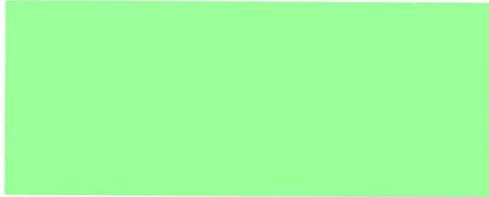


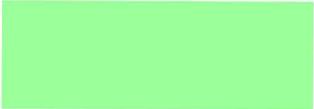
(b)(6)

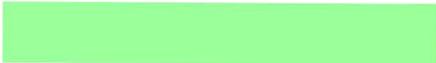
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **NOV 18 2013** Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

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:

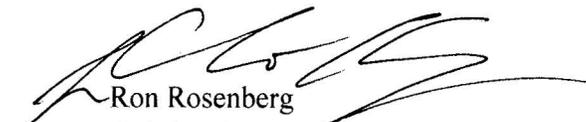


INSTRUCTIONS:

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 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 Immigration and Nationality Act (“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, concluding that the petitioner had failed to establish a qualifying relationship with her former spouse, and eligibility for classification as a spouse of a lawful permanent resident, and that she was a person of good moral character. On appeal, counsel submits a brief and previously submitted 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 lawful permanent resident 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). An alien who has divorced an abusive lawful permanent resident 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)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb).

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are further Section 204(a)(1)(J) of the Act states, in pertinent part, the following:

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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

* * *

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship[.]

* * *

(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)(B)(ii) 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.

* * *

(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. . . . 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 is a citizen of Mexico who married R-P-¹, a lawful permanent resident of the United States, on June 18, 1991. They divorced on January 25, 1999. On June 14, 2011, the petitioner filed the instant Form I-360, which the director denied along with a concurrently filed application for adjustment of status.

¹ Name withheld to protect the individual's identity.

On appeal, counsel asserts that the petitioner has the requisite qualifying relationship for a self-petition as a battered spouse, and is eligible for immigrant classification based on that qualifying relationship.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record the petitioner has failed to overcome the director's grounds for denial.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner has failed to establish a qualifying spousal relationship with her former husband. The record reflects that the petitioner divorced her lawful permanent resident husband on January 25, 1999, and filed the instant Form I-360 on June 14, 2011. On appeal, counsel contends that the petitioner has the requisite qualifying spousal relationship as the former spouse of a lawful permanent resident, and that she is eligible for preference immigrant classification under section 203(a)(2)(A) of the Act based on her former marriage to a lawful permanent resident. Counsel does not acknowledge that the statute requires divorced self-petitioners to file within two years of the termination of their marriage. An alien who has divorced an abusive lawful permanent resident spouse may still file a self-petition if he or she demonstrates that the divorce from the abusive U.S. lawful permanent resident was connected to the battering or extreme mental cruelty, and the alien files the self-petition within two years of the divorce. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb). The petitioner filed the instant Form I-360 more than 12 years after the termination of her marriage. Consequently, the petitioner has not demonstrated the requisite qualifying relationship with R-P- and her corresponding eligibility for classification as a spouse of a lawful permanent resident, as required by subsections 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and (cc) of the Act.

Good Moral Character

On appeal, counsel does not address the director's determination that the petitioner had not established her good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. See 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance or a state-issued criminal background check from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* If police clearances are unavailable, the self-petitioner may submit an explanation and other credible evidence of good moral character such as affidavits from persons who have personal knowledge of the self-petitioner's good moral character. *Id.* In the instant case, the petitioner did not submit in the record below or on appeal her own affidavit or any other affidavits attesting to her good moral character. The petitioner also did not submit a criminal background check from Tulare, California, which is where the petitioner resided for seven years, or explain why a police clearance is not available or why she could not obtain a 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

The petitioner has failed to demonstrate the requisite qualifying spousal relationship, and eligibility for immigrant classification based on such a relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and (cc) of the Act. She has also not established her good moral character. She is therefore 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *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.