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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 2 6 2014 Office: VERMONT SERVICE CENTER File:

IN RE: Self-Petitioner:

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:

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.

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 sustained and the petition will be approved.

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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that she: (1) has a qualifying relationship with a U.S. citizen; (2) is eligible for immigrant classification based upon that relationship; and (3) entered into the marriage with her former husband in good faith.

On appeal, the petitioner reasserts her eligibility and submits additional evidence.

Applicable Law

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

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
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> * * *
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> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].
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> * * *

> (ix) *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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages . . . .
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> (vii) *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 relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner was born in Jamaica and entered the United States as an H-2B nonimmigrant worker on April 7, 2002. She married her second spouse, a U.S. citizen, on July 1, 2009 in Tennessee, and they were divorced on November 30, 2010. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on May 16, 2011. The director issued a request for evidence (RFE) of, among other things: the termination of the petitioner's first marriage in order to establish that the petitioner shared a qualifying relationship with her second husband and was therefore eligible for immediate relative classification based on that relationship; and her good-faith entry into their marriage. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these three grounds. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. On appeal, the petitioner has overcome the director's grounds for denial for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner initially provided a personal statement dated January16, 2010, that focused primarily on the abuse she suffered before and during her second marriage. The petitioner stated that her second husband paid for her divorce from her first husband. She also provided a copy of her second husband's birth certificate showing that he was born in County, Tennessee. In response to the director's RFE, the petitioner provided a Final Decree of Absolute Divorce from her first husband dated July 21, 2009, a personal statement, and other evidence.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with her second spouse, a U.S. citizen, and was eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. Specifically, the director found that the petitioner's divorce from her first husband was not final until July 21, 2009; therefore, the evidence below did not demonstrate that the petitioner was free to marry her second spouse on July 1, 2009. The director concluded that because the record did not contain satisfactory evidence that the petitioner was free to marry her second spouse, the petitioner did not establish by a preponderance of the evidence that she had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on that relationship under section 201(b)(2)(A)(i) of the Act.

Primary evidence of a qualifying relationship with a U.S. citizen spouse includes a marriage certificate issued by civil authorities, and proof of the legal termination of any prior marriages of the self-petitioner. 8 C.F.R. § 204.2(c)(2)(ii). A marriage must be valid under the laws of the jurisdiction of the place where the marriage is celebrated. *Matter of Adamo*, 13 I&N Dec. 26 (BIA 1968). Similarly, a divorce must be valid under the laws of the jurisdiction granting the divorce. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). In visa petition proceedings, an annulment or invalidation of a prior marriage from inception can have retroactive effect where there is no intent to evade immigration laws. *Matter of Astorga,* 17 I&N Dec. 1, 5 (BIA 1979).

On appeal, the petitioner submits an August 6, 2013 Amended Final Decree of Divorce Changing the Effective Date of the Decree Nunc Pro Tunc (Amended Final Decree of Divorce). The Amended Final Decree of Divorce changes the petitioner's date of divorce based on the petitioner's "Rule 60 motion," making the effective date of the divorce June 15, 2009, the date of her divorce hearing.

The petitioner also provided a copy of an unpublished decision from the Tennessee Court of Appeals finding that the "intent of the trial court is paramount in determining whether and when the order of divorce is effective," and that a trial court may enter an order nunc pro tunc on a divorce when it is evident that the trial judge intended the divorce to be effective on a date that is earlier than the final

order date. *Daniel v. Daniel*, No. 02A01-9606-CH-00135, 1998 WL 55000, at *4-5 (Tenn. Ct. App. Feb. 12, 1998).

The Tennessee Rules of Civil Procedure provide, in pertinent part:

> Clerical mistakes in judgments, orders or other parts of the record, and errors therein arising from oversight or omissions, may be corrected by the court at any time on its own initiative or on motion of any party and after such notice, if any, as the court orders.

Tenn. R. Civ. P. 60.01.[1]

Based on the Amended Final Decree of Divorce, the preponderance of the evidence submitted below and on appeal demonstrates that the petitioner was divorced from her first spouse and that she and her second spouse were properly married on July 1, 2009. The amended divorce date is simply the rectification of a clerical error rather than an attempt to evade the immigration laws. Accordingly, the petitioner has established that she had a qualifying spousal relationship with her second husband, a U.S. citizen, and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Good-Faith Entry into Marriage

The petitioner initially submitted a personal statement dated January 16, 2010, that contains a detailed, probative account of her good-faith entry into the marriage, including details of her courtship, her second husband's marriage proposal, her intentions and feelings for her spouse before and after her marriage, and their shared time together. In response to the director's RFE of shared emotional, economic or domestic bonds, she submitted an additional personal statement which recounted her intentions before and after marriage. She explained that she owned the house before her second marriage and everything was already in her name before she married and the abuse started. She submitted additional letters from friends who attested to her good-faith marriage.

The petitioner initially provided the following documents, which reflect both her and her second husband's names and a common address: their July 21, 2009 marriage certificate; a January 2010 Order of Protection issued to her second husband and a subsequent October 2010 Order dissolving the Order of Protection; and a January 2010 Ex Parte Order of Protection issued to the petitioner. She provided the results of a criminal background check on her second husband showing the State of Tennessee initiated criminal charges against him in January of 2010 at the shared residence, photographs of the former couple, and letters that her second spouse wrote to her during their marriage. In response to the RFE, the petitioner provided copies of bills that were sent to her second husband or to her at the same address during the same period. She submitted letters from friends who asserted their belief that the petitioner entered into her second marriage in good faith.

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[1] Available at http://www.tncourts.gov/rules/rule-civil-procedure/6001 (last visited Aug. 22, 2014).

The director determined that the petitioner had not established that she entered into marriage with her spouse in good faith because she was not divorced from her first husband on the day that she married her second husband. The director did not address the remaining evidence relevant to the petitioner's good-faith entry into her second marriage. On appeal, the petitioner has established that her divorce from her first spouse was final at the time she entered into her valid marriage with her second U.S. citizen spouse. The record also contains relevant and credible statements from the petitioner and letters from her friends supporting the petitioner's claims. Accordingly, the preponderance of the evidence submitted below and on appeal demonstrates that the petitioner entered into marriage with her second spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has overcome the director's grounds for denial and she is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) 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, the petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.