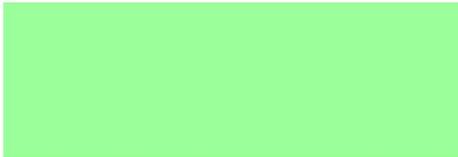




U.S. Citizenship  
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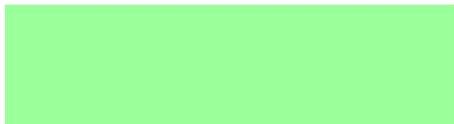


Date: **DEC 12 2014** Office: VERMONT SERVICE CENTER File:

IN RE: 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. 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 Director, Vermont Service Center, (“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 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 U.S. citizen spouse.

The director denied the petition because the petitioner failed to establish that she had a qualifying relationship as the spouse of a U.S. citizen and because she married another person during the pendency of the self-petition. The director also noted that the petitioner did not meet the requirements of residency, battery or extreme cruelty and good faith marriage, but did not address these issues in detail, as the petition was denied on the noted grounds.

On appeal, the petitioner submits a brief.

#### *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 or intended to enter 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 101(a)(50) of the Act states that:

The term “intended spouse” means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB) or 240A(b)(2)(A)(i)(III).<sup>1</sup>

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:

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<sup>1</sup> The cited sections refer to an alien who entered into a marriage with good faith intentions, but the marriage was not legitimate due to the bigamy of the intended spouse.

*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.

(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 . . . .

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Cambodia who was admitted to the United States on December 6, 2005 on a K-1 fiancée visa with the intention to marry M-M-<sup>2</sup>, the petitioner of the fiancé petition.<sup>3</sup> She states in her affidavit, dated November 27, 2012, that when her fiancé came to visit her in Cambodia, they had a traditional Cambodian engagement ceremony, and that she was committed to marry her fiancé within 90 days of arriving into the United States. She states that when she arrived in the United States, her fiancé had changed his mind and wished to marry someone else. The petitioner states that she had no money to return to Cambodia, and had to live with someone she did not know. In May, [REDACTED], she married S-S-<sup>4</sup>.

On December 20, 2012, the petitioner filed a Form I-360 based on her intended marriage to M-M-, a U.S. citizen, claiming that his abandonment of her constituted extreme cruelty. On December 21, 2012 the director notified the petitioner that she was not *prima facie* eligible for the visa classification and requested evidence of the petitioner's good moral character. The petitioner responded to the director's request and on March 20, 2014, the director denied the petition because the petitioner did not have the requisite qualifying relationship, was ineligible for immediate relative classification, and further because she married S-S-.

The AAO reviews these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility.

*Failure to Issue RFE on all Issues*

As a preliminary matter, the petitioner contends on appeal that the director did not ask about the petitioner's qualifying relationship with her intended spouse before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> The Form I-129F petition was filed under receipt number [REDACTED]

<sup>4</sup> The petitioner's husband is a U.S. citizen and has an approved Form I-130 on behalf of the instant petitioner. She has a final order of removal against her that was affirmed by the Board of Immigration Appeals on June [REDACTED]

"where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation.

Even if the director committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has had the opportunity to supplement the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

### *Qualifying Relationship*

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages, and evidence of the citizenship of the U.S. citizen spouse.

The petitioner does not claim to have married M-M-, and did not submit a marriage certificate reflecting that she wed M-M- at any time.<sup>5</sup> On appeal, the petitioner, through counsel, contends that she entered into an unbreakable commitment at the engagement ceremony, and that the Act provides benefits for intending spouses who intend to enter into a marriage in good faith. As noted above, the definition of "intended spouse" includes those who went through a marriage ceremony in good faith, but the marriage is invalid because of the bigamy of the intended spouse. *See* Section 101(a)(50) of the Act. In this case, there is no evidence that the petitioner married M-M-. As there was no marriage, the petitioner does not have a qualifying relationship with a United States citizen spouse as required by Section 204(a)(1)(A)(iii)(II)(aa) of the Act.

The petitioner has not overcome this ground for denial on appeal.

### *Eligibility for Immediate Relative Classification*

We affirm the director's finding that the petitioner has not established that she has a qualifying relationship with a United States citizen and has not demonstrated her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

### *The Petitioner's Marriage to S-S-*

The director also denied the petition because the petitioner married S-S-. The petitioner does not contest this finding of the director on appeal. The petitioner's marriage to S-S- established a new spousal relationship and has shown that she no longer needs the protection provided by section 204(a)(1)(A)(iii) of the Act. *See Delmas v. Gonzalez*, 422 F. Supp. 2d 1299 (S.D. Fla. 2005).

<sup>5</sup> Nor does the record contain documentation of the engagement ceremony.

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*Conclusion*

On appeal, the petitioner has not established that she has a qualifying relationship as the spouse of a U.S. citizen and that she is eligible for immigrant classification based upon that relationship. She is consequently ineligible 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, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.