



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

Date: DEC 30 2014

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:

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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 sustained.

The petitioner seeks immigrant classification pursuant to 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 her lawful permanent resident spouse.

The director denied the petition for failure to establish eligibility for the bona fide marriage exemption at section 245(e) of the Act to the bar at section 204(g) of the Act. On appeal, the petitioner submits a brief and additional evidence.<sup>1</sup>

### *Relevant Law and Regulations*

Section 204(a)(1)(B)(ii)(I) 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 permanent resident 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 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).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . 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 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.

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<sup>1</sup> On appeal, prior counsel failed to submit a new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(ii), we provided prior counsel with an opportunity to submit a new Form G-28; however, we did not receive a response. As favorable action is warranted in this matter, we consider the petitioner to be self-represented and issue this decision directly to the petitioner, without notice to prior counsel.

In addition, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv). Section 204(g) of the Act states:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status . . . by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, first entered the United States on September 15, 1989 without inspection by an immigration officer. The petitioner's administrative record indicates that Immigration and Naturalization Service officials encountered the petitioner on September 9, 1992, and issued her a Voluntary Departure Notice, valid until October 7, 1992. On October 8, 1992, the petitioner presented herself at the Midland, Texas Border Patrol Station and was issued a Form I-221, Order to Show Cause. The administrative record reflects that the Form I-221 was filed with the Executive Office for Immigration Review (EOIR) on October 20, 1992, and that the petitioner failed to appear for her immigration hearing at the El Paso Immigration Court. The court ordered the petitioner deported *in absentia* on November 18, 1992. The petitioner represents that she was deported on or about November 20, 1992. The petitioner's administrative record indicates that she was scheduled to be deported on January 15, 1993, and that the notice mailed to her on December 22, 1992 advising her of the scheduled deportation was returned as unclaimed. The record further reflects that the petitioner returned to Mexico; the Mexican birth certificate of the petitioner's first child shows that the petitioner gave birth to her daughter on October [REDACTED] Mexico. The petitioner represents on her Form I-360 self-petition that she had three more children in the United States between [REDACTED]. The petitioner further represents that she last entered the United States in October 2007.

On January [REDACTED] the petitioner married C-F-<sup>2</sup>, a lawful permanent resident of the United States, and filed the instant Form I-360 self-petition on September 9, 2013. The director subsequently issued a request for evidence (RFE) informing the petitioner that she was subject to section 204(g) of the Act because she married C-F- while in immigration proceedings. The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. On appeal, the petitioner has overcome the director's ground for denial for the following reasons.

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

*Section 204(g) of the Act*

Section 204(g) of the Act bars approval of a petition granting immediate relative status through a marriage entered into during the pendency of removal or deportation proceedings, unless the petitioner proves that the marriage is bona fide by clear and convincing evidence under the exemption at section 245(e) of the Act. The regulation at 8 C.F.R. § 245.1(c)(8)(i)(B) indicates, in pertinent part, that deportation proceedings commence "[w]ith the filing of a Form I-221, Order to Show Cause and Notice of Hearing, issued on or after June 20, 1991, with the Immigration Court." Here, the petitioner's administrative record indicates that her Form I-221 was filed with EOIR on October 20, 1992, placing her in deportation proceedings on that date. Thus, the director correctly identified that the petitioner was placed into deportation proceedings in 1992. The El Paso Immigration Court subsequently ordered the petitioner removed *in absentia* on November 18, 1992. The regulation at 8 C.F.R. § 245.1(c)(8)(ii)(A) states, in pertinent part, that the period during which the alien is in deportation proceedings terminates "[w]hen the alien departs from the United States while an order of . . . deportation . . . is outstanding . . . ." Here, the petitioner represents that she departed the United States on or about November 20, 1992; however, as the petitioner's record does not contain evidence of the date of her departure, the director concluded that the petitioner's proceedings had not terminated by the time of her marriage to C-F- in 2012. In her decision, the director found that the record contained no evidence to support the petitioner's claim that she last entered the United States in 2007, and noted the petitioner's three children born in the U.S. between [REDACTED] as evidence that the petitioner had continually resided in the United States.

Contrary to the director's findings, the record indicates that the petitioner's proceedings terminated prior to her marriage to C-F-. The Mexican birth certificate for the petitioner's first child establishes that the petitioner was in Mexico on October [REDACTED], the date upon which she gave birth to her daughter. Although the administrative record does not contain evidence of the date of the petitioner's departure, the record reflects that she departed the U.S. under an outstanding order of deportation by October [REDACTED] and that her proceedings were therefore terminated by that date. Thus, the period during which the petitioner was in deportation proceedings had terminated before she married C-F- in [REDACTED] and her self-petition is not barred by section 204(g) of the Act.

*Conclusion*

The director correctly determined that the petitioner has established all other requisite grounds of eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. *De novo* review of the record demonstrates that the self-petition is not barred by section 204(g) of the Act. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met. The petitioner has overcome the director's sole ground for denial, and established her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. The appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.