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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 27 2014 Office: VERMONT SERVICE CENTER FILE [redacted]

IN RE: 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,

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 sustained.

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 for failure to establish that the petitioner: (1) has a qualifying relationship with a lawful permanent resident; (2) is eligible for immigrant classification based upon that relationship; (3) entered into the marriage with her former husband in good faith; and (4) shared a residence with her former husband.

On appeal, the petitioner submits a statement and additional 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 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).

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 lawful permanent resident spouse." 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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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 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:

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 . . . .

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . ., deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 is a citizen of Mexico who claims she entered the United States in November 1999. The petitioner married a U.S. Lawful Permanent Resident, U-M-, on [redacted] 2006 in Las Vegas, Nevada.[1] Their marriage terminated in a divorce on [redacted], 2011. The petitioner filed the instant

[1] Name withheld to protect the individual's identity.

Form I-360 on September 4, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's: (1) qualifying relationship with a lawful permanent resident; (2) eligibility for immigrant classification based upon that relationship; (3) entry into the marriage with her former husband in good faith; and (4) shared residence with her former husband. The petitioner responded to the RFE with additional evidence. The director found the additional evidence insufficient to establish eligibility and denied the petition. The petitioner timely appealed.

The AAO reviews 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, establishes the petitioner's eligibility. The appeal will be sustained for the following reasons.

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)(B)(ii) of the Act requires that the petitioner submit evidence of the marital relationship and proof of the immigration status of the lawful permanent resident abuser. The petitioner initially submitted a Nevada marriage certificate reflecting that she and U-M- wed on 2006. She also submitted one of U-M-'s earnings statements, which contained his social security number. In response to the RFE, the petitioner provided U-M-'s date of birth and she resubmitted his earnings statement.

The director concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner has a qualifying relationship with a U.S. citizen or lawful permanent resident and is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. On appeal, the petitioner submits a copy of U-M-'s permanent resident card and a letter from U-M- verifying his alien number and former marriage to the petitioner. U.S. Citizenship and Immigration Services (USCIS) records confirm that U-M- is a lawful permanent resident. Therefore, the petitioner has established that she has a qualifying relationship with a lawful permanent resident of the United States and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa),(cc) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal also demonstrates that the petitioner entered into her marriage in good faith. In the affidavit the petitioner submitted below she recounted that after she entered the United States she took a position as a seasonal agricultural worker in California. She stated that U-M- was her supervisor and they dated for one year and then moved in together. The petitioner described her joint residence, seasonal migrations and shared experiences with U-M- during their courtship. She recounted that after five years of living together, U-M- proposed to her and they wed in Las Vegas, Nevada. The petitioner described their subsequent marital life together in probative detail, including their financial troubles, her husband's unemployment, and his threats and controlling behavior. The petitioner provided several family photographs and a vehicle registration renewal notice addressed to her and U-M-.

On appeal, the petitioner submits: a second self-affidavit; an affidavit from U-M-; a letter from Parish Secretary, of the a letter from her former landlord an affidavit from her daughter-in-law, and a letter from her former neighbor, In her second affidavit, the petitioner recounted that she and U-M- resided together for ten years. She stated that during this time, U-M- baptized her grandchildren and participated in her son's wedding. She stated that her grandchildren and son had a loving relationship with U-M- and her grandchildren call him "grandpa." The petitioner explained that her husband handled all the finances and never included her on his tax return. U-M- briefly stated in his affidavit that he resided with the petitioner in California and California and supported her financially. stated in her letter that on December 28, 2008, the petitioner and U-M- participated in a baptism at the church as godparents. stated that she has personal knowledge of the petitioner's relationship with U-M- and her children call him "grandpa." confirmed the couple's residence at her home in discussed her interactions with the petitioner and U-M- when the couple resided in her neighborhood in California.

Upon a full review of the evidence submitted below and supplemented on appeal, the petitioner has established her good-faith entry into the marriage with U-M-. The petitioner discussed in probative, credible, detail how she first met U-M-, their courtship, wedding ceremony, joint residence and shared experiences. The petitioner's supporting documentation and the statements from the petitioner's church, her daughter-in-law, former landlord, former neighbor and the affidavit from U-M-, further demonstrate the petitioner's good-faith entry into the marriage. Accordingly, the petitioner has demonstrated by a preponderance of the evidence that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Joint Residence

The record also demonstrates that the petitioner resided with U-M-. In the petitioner's first affidavit, she provided a detailed, credible account of moving to different cities with U-M- based on the availability of seasonal agricultural employment. She recounted that during their courtship and marriage they resided together at various rental properties in and outside and based on the agricultural season and employment opportunities. In her second affidavit the petitioner explained that she and U-M- moved frequently based on the availability of employment and rented bedrooms because they could not afford an apartment. U-M- also provided in his statement that he resided with the petitioner in and The petitioner submitted below a copy of a receipt addressed to U-M- at California and a postmarked envelope from a medical center sent to her at the same address. provided a detailed recollection of the couple's residence in her neighborhood on attested to the petitioner and U-M-'s residence in her home in from 2002 until 2005. also stated that she had knowledge of the petitioner's residences in and Accordingly, the record establishes by a preponderance of the evidence that the petitioner resided with her former husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has overcome the director's determinations and established that she: (1) has a qualifying relationship with a lawful permanent resident; (2) is eligible for immigrant classification based upon that relationship; (3) entered into her marriage in good-faith; and (4) shared residence with her former spouse. She is consequently eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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 now been met.

ORDER: The appeal is sustained.