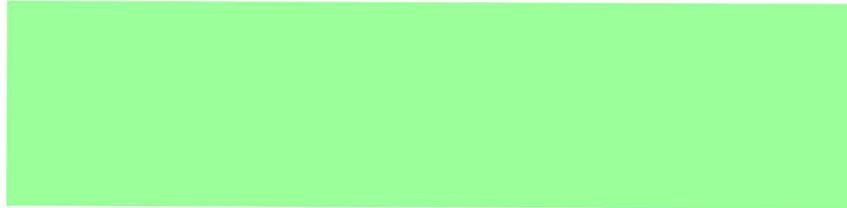


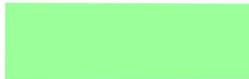
(b)(6)

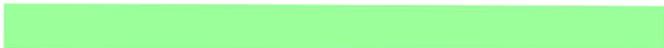


U.S. Citizenship  
and Immigration  
Services



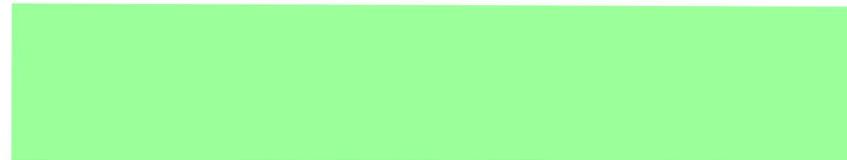
Date: **OCT 03 2014** Office: VERMONT SERVICE CENTER

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:

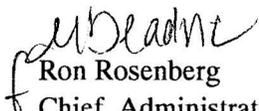


INSTRUCTIONS:

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. 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 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 dismissed.

The petitioner seeks immigrant classification under 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 because she determined that the petitioner failed to provide evidence of the termination of her first marriage in response to a specific request for evidence. Without an original divorce decree from her first marriage, the director determined that the petitioner did not demonstrate the existence of a qualifying relationship with a citizen of the United States.

On appeal, the petitioner submits a brief and additional documentation.

#### *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).

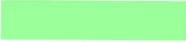
An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:



\* \* \*

(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].

\* \* \*

(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 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.

(ii) *Relationship.* A self-petition filed by a spouse must 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, if any, of... the self-petitioner ....

\* \* \*

(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 was born in Palestine on July [REDACTED] and first entered the United States on March 11, 2004, as a B-2 nonimmigrant visitor. The petitioner married J-N-, a U.S. citizen, on July [REDACTED] Illinois and divorced him on May [REDACTED].<sup>1</sup> The petitioner filed the instant Form I-360 self-petition on May 1, 2012. The director subsequently issued Notice of Intent to Deny (NOID) the petition because she determined that the petitioner had failed to provide evidence that she divorced her first husband in Palestine before marrying J-N- and therefore failed to establish a qualifying spousal relationship with a U.S. citizen. The director advised the petitioner that to establish she was free to marry J-N-, she must submit evidence of the legal termination of her first marriage. The petitioner responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, determining that the petitioner had not established the existence of a qualifying relationship with a citizen of the United States. 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, and we will dismiss the appeal for the following reasons.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

According to the regulation at 8 C.F.R. § 204.2(c)(2)(ii), evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii)(I) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all of the petitioner's prior marriages, and evidence of the citizenship of the U.S. citizen spouse. The petitioner's record of proceeding contains a previous Form I-360 self-petition she filed on November 28, 2010. She concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and a Form G-325A, Biographic Information with the prior self-petition. On her Form G-325A, she indicated that she had been married in Palestine and that her marriage terminated in Palestine, but she did not indicate the date and place that the marriage terminated. In a statement accompanying her first Form I-360 self-petition the petitioner asserted that she divorced her first husband "in the winter of 2003 in [REDACTED] Palestine," but did not provide a copy of her divorce decree. She claimed that her family in [REDACTED] took all of her divorce documents, her gold, and her birth certificate. The director denied that petition finding that without evidence of the termination of her first marriage in Palestine, the petitioner had not established a qualifying spousal relationship with J-N-.

On her Form I-360 self-petition that is now on appeal, the petitioner again indicated that she had been married two times. In her initial affidavit, the petitioner asserted that she was previously married in Palestine but divorced her first husband. She initially submitted a copy of her marriage certificate showing that she and J-N- married on July [REDACTED], in [REDACTED] Illinois, and a certified copy of their dissolution judgment showing that they were divorced on May [REDACTED]. The record also contains a copy of J-N-'s naturalization certificate showing that he is a U.S. citizen.

---

<sup>1</sup> Name withheld to protect the individual's identity.

In response to the director's NOID, the petitioner asserted that she had made several unsuccessful attempts to obtain a copy of her foreign divorce decree from her first husband. She again asserted that her family in the United States took her copy away from her, and claimed that she is no longer in contact with her children or anyone else in [REDACTED] who could help her to obtain a new copy of her foreign divorce decree. The petitioner indicated that she had provided a power of attorney to at least three individuals who she thought could obtain a copy of her divorce decree, but had lost touch with two of them before they did so. She requested additional time in which to obtain a divorce decree, and provided a copy of the letter she claimed to have given her third contact to secure her divorce decree in [REDACTED]. The petitioner's request for additional time was dated July 12, 2013, but as of this date, the petitioner has not provided a divorce decree for her first marriage.

On appeal, the petitioner resubmits previously provided evidence and asserts that USCIS should consider her prior statements to be evidence of her divorce and suggests that the director failed to explain why her affidavits were not sufficient credible evidence for this purpose. While USCIS will consider any credible evidence, primary evidence of a marital relationship includes proof of the termination of all of the petitioner's prior marriages. In this case, the petitioner has not indicated or established that her divorce decree is unobtainable, instead asserting that it is difficult for her to obtain. Her general claim to have divorced her first husband and to be having difficulty obtaining a copy of the foreign divorce decree is not sufficient to establish that she divorced her first husband before marrying J-N-.

The preponderance of the evidence submitted below and on appeal does not demonstrate that the petitioner was divorced from her first husband prior to her marriage to J-N-. Accordingly, the petitioner has not established that she had a qualifying spousal relationship with 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 Moral Character*

As an additional matter, the petitioner has not established her good moral character.<sup>2</sup> Primary evidence of a self-petitioner's good moral character is his or her affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner's residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v).

The petitioner filed the instant petition on May 1, 2010. Her affidavits do not address her good moral character. She provided a February 26, 2010 letter indicating that "the City of [ ] has no criminal record

---

<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

or activity” for the petitioner.<sup>3</sup> However, the petitioner also lived in two other municipalities in Illinois during the three-year period preceding the filing of the petition, and the petitioner failed to provide the required clearances or background check from these jurisdictions. Accordingly, because the petitioner failed to address her good moral character in her affidavits and failed to provide all of the required police clearances, she has not established by a preponderance of the evidence that she has good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not demonstrated that she had a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immigrant classification. Further, she has failed to satisfy the requirements for establishing good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.

---

<sup>3</sup> Omitted to protect petitioner’s privacy.