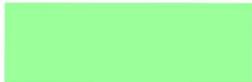
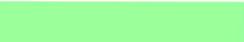




U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 17 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:

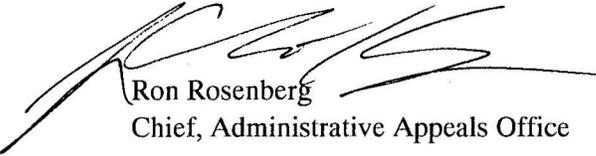
SELF-REPRESENTED

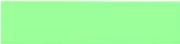
INSTRUCTIONS:

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. 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 former U.S. citizen spouse.

On July 15, 2013, the director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification based upon such a relationship because the petitioner divorced her abusive spouse and remarried another man. The director further found that the petitioner failed to establish she married her first husband in good faith and resided with him. On appeal, the petitioner submits a statement and additional evidence.

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 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 eligibility requirements for an abused spouse self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) . . . (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].

(ii) *Legal status of the marriage.* . . . The self-petitioner’s remarriage . . . will be a basis for the denial of a pending self-petition.

* * *

(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)(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:

(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 . . . abuser. . . .

(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 Vietnam who entered the United States on March 20, 2007, as the fiancée of a U.S. citizen, H-N-¹. The petitioner did not marry H-N-, but married K-K-, a U.S. citizen, on April [REDACTED]. The marriage ended in divorce on March [REDACTED]. The petitioner married T-D-, who is also a U.S. citizen, on November [REDACTED]. The petitioner filed the instant Form I-360 self-petition on August 31, 2012, based on her marriage to K-K-. The director subsequently issued a Request for Evidence (RFE) to meet all of the eligibility criteria. The petitioner timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

¹ Names withheld to protect the individuals' identity.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director correctly determined that the petitioner did not have a qualifying relationship with an abusive United States citizen and was ineligible for immediate relative classification based on such a relationship. The regulation at 8 C.F.R. § 204.2(c)(1)(ii) specifically states that remarriage prior to adjudication of a self-petition is a basis for denial. The record contains copies of the petitioner's final order of divorce from K-K- in 2008 and her certificate of marriage to T-D- in 2010. These documents show that the petitioner had divorced her abusive first husband, K-K-, and remarried T-D- before this petition was filed in 2012. She consequently had no qualifying relationship with K-K- and was ineligible for immediate relative classification based on their former marriage.

On appeal, the petitioner states that she divorced K-K- because of his abuse, but she does not address her remarriage to T-D-. In her Time-Line Letter of Chain of Events, the petitioner states that her life "has been good" since her divorce from K-K-, her remarriage to T-D- and the birth of their two children. The petitioner established that K-K- subjected her to battery or extreme cruelty during their former marriage. However, her remarriage to T-D- renders her ineligible for immigrant classification based on her former marriage to K-K-. There is no exception to the remarriage disqualification at 8 C.F.R. § 204.2(c)(1)(ii). Cf. *Delmas v. Gonzalez*, 422 F.Supp.2d 1299, 1303 (S.D. Fla. 2005) ("Congress could reasonably conclude that an abused spouse who chooses to remarry before approval of her self-petition based on the abuse of a former spouse is no longer in need of protection."). The petitioner did not have a qualifying relationship as the spouse of an abusive U.S. citizen and is ineligible for immediate relative classification based upon such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

Joint Residence

The petitioner did not indicate on her Form I-360 self-petition that she ever resided with K-K- and she did not list an address for their marital residence. She also did not describe her joint residence with K-K- after their marriage in her statements. For example, she did not describe where they lived, their shared belongings, or provide any other substantive information regarding her residence with K-K- after their marriage. Letters of support in the record similarly do not address the petitioner's residence with K-K- and there is no other relevant evidence in the record. Accordingly, the preponderance of the evidence does not demonstrate that the petitioner resided with her ex-husband after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The petitioner stated that she entered the United States on March 20, 2007, to marry H-N-, but that after she arrived, he told her the marriage was not for him but for his friend. She explained that she was

thinking about what to do and became friends with K-K-. She described that even though they knew each other for only a short time, they fell in love with each other and she married him on April [REDACTED]

The applicant fails to address her good-faith marital intentions with K-K-. She does not address how she met K-K-, their courtship, or their wedding ceremony. She does not describe their shared residence or any experiences as a couple. Affidavits from numerous friends state, using identical language, that the petitioner “thought this was a Good Faith Marriage,” but do not address the petitioner’s marital intentions or her relationship with K-K-. They do not describe, for example, any specific visit or social occasion they spent with the couple, or any other interactions with the couple that would establish their personal knowledge of the relationship. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with K-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not established a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification based upon such a relationship. She has also not established that she resided with her ex-husband after their marriage or that she married him in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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 not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.