



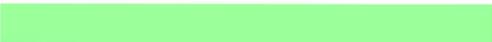
U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **SEP 11 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)

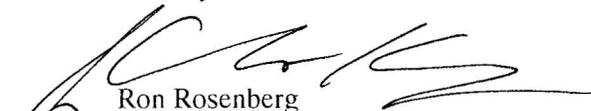
ON BEHALF OF PETITIONER:

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 Vermont Service Center director (“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 the petitioner was divorced from her U.S. citizen spouse more than two years before she filed her self-petition and additionally failed to establish the requisite good moral character, good-faith entry into the marriage, and battery or extreme cruelty.

*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 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 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 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

... 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 ....

*Facts and Procedural History*

The petitioner is a citizen of the Philippines who married J-R-<sup>1</sup>, a United States citizen, in [REDACTED] on [REDACTED] 2002. The petitioner entered the United States on [REDACTED] 2005 as J-R-'s nonimmigrant spouse, and they divorced in California on [REDACTED] 2008. The petitioner filed the instant Form I-360 on May 13, 2013. The director subsequently issued a Request for Evidence (RFE) of the requisite good moral character and good-faith entry into marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

We find no error in the director's determination. The instant petition was filed more than two years after the petitioner and J-R- divorced. The petitioner consequently had no qualifying relationship with J-R- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and is ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

On appeal, counsel briefly asserts that the two-year, post-divorce filing deadline is a statute of limitations subject to equitable tolling. Counsel cites no binding legal authority for his claim. Although counsel references *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D. Colo. 2011), that decision is not precedential as we are not bound to follow the published decisions of any United States district court, even in matters arising within the same district, which the present petition does not. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act allows a former spouse to file a self-petition for up to two years after divorcing and there is no exception to this rule. Although courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation, the petitioner cites no case finding visa petition filing deadlines subject to equitable tolling. Compare *Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9<sup>th</sup> Cir. 2005) (time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) with *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9<sup>th</sup> Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). The two-year, post-divorce filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of repose not subject to equitable tolling, and we

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

lack the authority to waive this statutory deadline.<sup>2</sup> As the petitioner did not file the petition within two years of the legal termination of her marriage to J-R-, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

*Good Moral Character, Good-Faith Entry Into Marriage, and Battery or Extreme Cruelty*

Counsel contends that the director erred by failing to consider the petition on the merits. The record shows that the director considered all the relevant evidence regarding each eligibility criterion and provided the petitioner with an RFE and the opportunity to submit further evidence to establish her eligibility. In his decision, the director stated that the petitioner also failed to establish her good moral character, good-faith entry into the marriage, and that her former husband subjected her to battery or extreme cruelty during the marriage. Apart from asserting that the petitioner's "story outlives the abuse she suffered," counsel does not address any of these other criteria and does not submit any further evidence on appeal to overcome these additional grounds for denial. The petitioner has not demonstrated her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, her good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, or that her former spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not overcome the director's grounds for denial. The petitioner has failed to establish a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification, her good moral character, that she entered into the marriage with her former spouse in good faith, and that her former spouse subjected her to battery or extreme cruelty. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these five grounds.

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 not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> Even if the deadline were found to be a statute of limitations, the petitioner would still have to show that she exercised due diligence in pursuit of her claim. See *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Albillo-DeLeon v. Gonzalez*, 410 F.3d at 1100. Counsel asserts on appeal that the two-year, post-divorce filing deadline should be tolled because the petitioner demonstrated due diligence by relying on her mother-in-law's promise that the petitioner's "greencard application was filed." The petitioner has not herself addressed why she did not file the instant petition until nearly five years after her divorce. Regardless, as the two-year filing deadline is not subject to equitable tolling, we do not reach the issue of her due diligence.