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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: SEP 2 5 2014 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Self-Petitioner: [redacted]

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:

[redacted]

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,

MDeadrick

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that she entered into the marriage with her husband in good faith.

On appeal, the petitioner reasserts her eligibility and submits additional evidence.

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).

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:

> (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 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.

* * *

(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 was born in Kazakhstan on October 21, 1988, and entered the United States as an F-1 nonimmigrant student July 1, 2010. She married her spouse, a U.S. citizen, June 13, 2011 in Brooklyn, New York. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on March 19, 2012. The director issued a request for evidence (RFE) of, among other things, the petitioner's good-faith entry into their marriage. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on this ground. The director denied the petition and 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 as supplemented on appeal demonstrates that the petitioner has overcome the director's ground for denial. Because the petitioner remains ineligible on another ground, the matter will be remanded to the director for further action.

Good-Faith Entry into Marriage

The petitioner initially submitted an affidavit that contained a detailed, probative account of her good-faith entry into the marriage, including details of her courtship, her husband's marriage proposal, her intentions and feelings for her spouse before and after her marriage, their initial residence with his mother, her care for her stepdaughter, and their shared time together.

The petitioner provided plane tickets showing that she, her husband, and her stepdaughter traveled to Phoenix, Arizona in December of 2010, and evidence such as bank statements and a lease agreement that primarily relate to their joint residence, and unlabeled photographs that appear to be of her, her husband, and her stepdaughter at various locations.

In response to the director's RFE of shared emotional, economic or domestic bonds, the petitioner submitted a second affidavit which provided additional details about her courtship, their daily encounters at 7:30 pm, their weekly routines on Sundays i specific dates at restaurants, his proposal to her, her daily routines with him after their marriage, and her sadness at his neglect and his abuse even while she continued to care for him, her stepdaughter, and his other family members. The petitioner also provided an affidavit from a friend, who was the petitioner's friend before, during, and after the marriage. She confirmed that the petitioner had a loving relationship with her husband, cared for him and his family, and intended to have a child with her spouse.

On appeal, the petitioner submits a third affidavit in which she asserts that she loved her husband, and asserts that the lease agreement, and bank statements are evidence of commingled assets for purposes of establishing her good-faith entry into the marriage. She explains that she and her husband resided with his mother for several months and that her mother-in-law paid all expenses during time. After she and her husband moved into their own apartment, she asserts that "it was really hard to create a paper trail of joint documents and to commingle our resources and share responsibilities, when half of the time you are scared for your life." The record contains relevant and credible statements from the petitioner and her friend supporting the petitioner's claims. Accordingly, the preponderance of the evidence submitted below and on appeal demonstrates that the petitioner entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

On appeal, the petitioner has overcome the director's ground for denial. However, as the record is presently constituted, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii)(I) of the Act because she has not complied with the regulation at 8 C.F.R. § 204.2(c)(2)(v) regarding evidence of her good moral character, which states:

> *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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

The petitioner filed the Form I-360 self-petition on March 19, 2012, and during the three-year period prior to the filing of the petition, she lived in the State of New York. The petitioner has not provided a police clearance, criminal background check or similar report issued by the appropriate authority in New York. In addition, the record does not contain an affidavit from the petitioner attesting to her good moral character.

Conclusion

The matter is remanded to the director to request the appropriate evidence relating to the petitioner's good moral character and enter a new decision into the record. As always in these proceedings, 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).

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.