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

Date: SEP 30 2014 Office: VERMONT SERVICE CENTER File:

IN RE:

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 Director, Vermont Service Center, ("the director") denied the immigrant visa petition and the matter is now before the 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen, that she married him in good faith, and was eligible for immediate relative classification. On appeal, counsel submits a brief and additional evidence.

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).

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 are further explicated in the regulation 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:
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> * * *
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> (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].
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> * * *
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> (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 . . . . 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, if any, of . . . the self-petitioner . . . .

* * *

(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, a citizen of Mexico, states that she entered the United States on July 4, 1992 without inspection by an immigration officer. According to the petitioner, she departed the United States in August 1999, and unsuccessfully attempted reentry in October of the same year utilizing her sister's birth certificate. The petitioner's administrative record reflects that she was expeditiously removed on October 24, 1999. The petitioner states that she reentered the United States without inspection in December 1999. The petitioner married W-W-[1] on July 5, 2008 in Georgia. The administrative record reflects that the petitioner's order of removal was reinstated in May 2012. The petitioner filed the instant Form I-360 self-petition on August 7, 2012. The director subsequently issued a request for additional evidence (RFE) of the petitioner's qualifying relationship to a U.S. citizen and her good-faith entry into the marriage. The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility, and denied the petition. Counsel timely appealed.

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

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has established that she married W-W- in good faith. However, as she has failed to overcome the director's remaining grounds for denial, the appeal will be dismissed, and the petition will remain denied.

Qualifying Relationship and Eligibility for Immigrant Classification

The petitioner has not established that her spouse is a U.S. citizen. In her initial affidavit, dated April 23, 2012, the petitioner stated that W-W- is a U.S. citizen, but did not provide any documentation of his citizenship. A search of relevant U.S. Citizenship and Immigration Services (USCIS) records failed to provide any evidence of W-W-'s citizenship and the RFE specifically requested evidence of W-W-'s citizenship. In response, the petitioner provided a second affidavit, dated November 19, 2013, in which she provided W-W-'s date of birth, and indicated that he was born in Tennessee. The petitioner stated that she has no access to W-W-'s passport or birth certificate, and would be uncomfortable asking him for either document. However, public information from the confirms that individuals may obtain their spouses' birth records without their spouses' consent.[2] Thus, it appears that primary evidence of W-W-'s citizenship may be available to the petitioner. *See* 8 C.F.R. § 204.2(c)(2) (stating that self-petitioners are encouraged to submit primary evidence whenever possible).

Accordingly, the petitioner has not established that she has 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 subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

Entry into the Marriage in Good Faith

The petitioner has established by a preponderance of the evidence that she entered into her marriage in good faith. In her initial affidavit, dated April 23, 2012, the petitioner credibly stated that she met W-W- at the store where they both worked. She indicated that their relationship began as a friendship, but evolved into a romantic relationship in early 2008. She asserted that they married in July 2008 and moved into an apartment together, along with the petitioner's two children from a previous relationship. The petitioner submitted a copy of a lease dated July 5, 2008, which names the petitioner, W-W-, and the petitioner's two children as residents of the dwelling. The petitioner also provided several photographs of her and W-W- together with the children, and a letter from dated September 5, 2008 confirming one-time rental assistance to the petitioner and her husband. In her affidavit, the petitioner recounted that, during incidents of abuse, W-W- threw away their computer, other photographs, and important papers in jealous rage.

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[2] The website provides instructions for obtaining birth records, which it states are available to "certain family members." *See* Vital Records – Birth and Death Certificates, available on the Internet at (last visited on September 26, 2014). The Department confirms at that spouses are eligible to obtain birth records.

The director reviewed the petitioner's submission and issued an RFE dated October 18, 2013. In the RFE, the director notified the petitioner that because she married W-W- while she was in removal proceedings, section 204(g) of the Act barred approval of her self-petition unless she could establish eligibility for a bona fide marriage exemption under section 245(e)(3) of the Act.[3] The director informed the petitioner that in order to qualify for the exemption, she needed to establish good-faith entry into her marriage by clear and convincing evidence, which is a higher standard of proof than the preponderance of the evidence standard required under section 204(a)(1)(A)(iii)(I) of the Act.[4] However, section 204(g) of the Act does not apply to the instant self-petition because the petitioner married W-W- after her removal proceedings terminated in her expedited removal in 1999. *See* 8

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[3] Section 204(g) of the Act states:

> *Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status . . . by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

[4] Section 245(e) of the Act states in pertinent part:

> *Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception.* –
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> (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
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> (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
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> (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

8 U.S.C. § 1255(e) (emphasis added).

C.F.R. § 245.1(c)(8)(ii)(A) (proceedings are terminated when an alien departs the United States while an order of removal is outstanding). The petitioner married W-W- in 2008 before the order of removal was reinstated in 2012.

In response to the RFE, in an affidavit dated November 19, 2013, the petitioner provided a credible explanation for her lack of documentation. She stated that at the beginning of the marriage she allowed W-W- to handle all the bills and indicated that he did not want to put her name on any documents because she did not have a social security number. The petitioner asserted that W-W- would deposit her paycheck and would not give her access to the account. She stated that W-W- told her that he would file the couple's 2008 income tax return for them; however, the petitioner subsequently learned that W-W- included her children as his dependents but did not name the petitioner on the tax return. The petitioner provided a copy of W-W-'s 2008 federal tax return, which lists W-W- as "Head of household," and the petitioner's two children as his dependents.

In her second affidavit, the petitioner described the on-and-off nature of her relationship with her husband due to the abuse, and provided a January 2009 receipt for marital counseling. She also provided additional photographs of her and her husband during happier times.

The director found the evidence insufficient to establish the petitioner's good-faith entry into her marriage, and denied the petition. In her decision, the director referenced the RFE, in which she had advised the petitioner that her self-petition was subject to the higher clear-and-convincing standard of proof required to establish a bona fide marriage exemption from section 204(g) of the Act, under section 245(e)(3) of the Act. However, as discussed above, approval of the instant self-petition is not barred by section 204(g) of the Act, and is thus not subject to the higher standard of proof. *De novo* review of the record establishes by a preponderance of the evidence that the petitioner entered into her marriage in good faith. Her affidavits credibly describe her good-faith intent in marrying W-W-, and explain her lack of further documentation from the marriage. Her statements are supported by a lease, a federal income tax return, a receipt for marital counseling, confirmation of rental assistance, and family photographs. The preponderance of the evidence demonstrates that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not overcome all of the director's grounds for denial on appeal. Although the record demonstrates by a preponderance of the evidence that the petitioner entered into her marriage in good faith, the petitioner has failed to establish that she has a qualifying relationship with a U.S. citizen, and is eligible for immigrant classification based on that relationship. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.