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: 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 September 10, 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 spouse thirteen years before she filed her self-petition. The director further found that the petitioner failed to establish her joint residence with her ex-husband during their marriage, her good moral character, and her good-faith entry into the marriage. 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).

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 eligibility requirements are further explicated 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].

* * *

(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.

* * *

(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.

* * *

(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.

* * *

(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.

* * *

(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 Mexico who contends she entered the United States in 1991. On July 11, 1998, the petitioner married, K-O-[1], a United States citizen. The marriage ended in divorce on November 1, 1999. The petitioner filed the instant Form I-360 self-petition on December 31, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character and her marriage to K-O- in good faith. The record does not indicate that the petitioner responded to the RFE. The director denied the petition and the petitioner filed a timely appeal.

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

The director determined that the petitioner had not established a qualifying relationship with K-O- because her marriage ended in divorce on November 1, 1999, and more than two years had passed before she filed the instant self-petition. On appeal, the petitioner states that she suffered extreme domestic violence from her ex-husband and asks USCIS to give her the benefit of the doubt.

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

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act prescribes that a divorced alien's self-petition must be filed no longer than two years after the legal termination of the marriage. In the instant case, the petitioner's marriage ended in divorce on November 1, 1999, and therefore, she had until November 1, 2001, to file her self-petition. The petitioner did not file her self-petition until December 31, 2012, more than eleven years later. Neither the Act nor the regulations provide an exception to the two-year filing period for aliens who have divorced their abusive spouses. In addition, the petitioner did not provide evidence of her ex-husband's citizenship status as required by 8 C.F.R. § 204.2(c)(2)(ii). A search of relevant U.S. Citizenship and Immigration Services (USCIS) records also failed to provide any evidence of his U.S. citizenship. *See* 8 C.F.R. § 204.1(g)(3). Consequently, the petitioner has failed to demonstrate that she has a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

Joint Residence

The petitioner stated on her Form I-360 self-petition that she resided with K-O- from February 1998 until March 10, 1999, and that they last resided together in Tehachapi, California, but she did not state any street address. The petitioner did not submit a statement or any other relevant evidence of her joint residence with K-O- and she does not address the issue on appeal. Consequently, the record does not demonstrate that the petitioner resided with K-O- after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

The petitioner has not submitted evidence of her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in December 2009 and ending in December 2012). The petitioner did not discuss her moral character in her statement on appeal and she has not submitted local police clearances or state-issued criminal background checks for the requisite period. The petitioner has thus failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Entry into the Marriage in Good Faith

The petitioner's statement on appeal fails to address her good-faith entry into marriage with K-O-. She does not address the couple's courtship, wedding ceremony, shared residence and experiences. Affidavits from the petitioner's friend, and coworker also do not address the petitioner's marital intentions or her relationship with K-O-. The petitioner's friend, states he attended the couple's wedding, but he, Ms and Mr. do not address, 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-O- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Beyond the decision of the director, the record reflects that section 204(g) of the Act also bars approval of the self-petition.[2] The record in this case shows that on January 12, 1998, the petitioner was served with a Notice to Appear before the Anaheim, California, Immigration Court on March 11, 1998, for removal proceedings. On that date, she was ordered removed *in absentia*. The petitioner married K-O- on July 11, 1998, and remains in removal proceedings as of the date of this decision.[3] In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

> *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.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

> *Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception.* –
>
> (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] 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).

[3] The record does not show that the petitioner departed the United States in compliance with the removal order or that the removal proceedings have terminated under any of the other conditions specified in 8 C.F.R. § 245.1(c)(8)(ii).

> (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.
>
> (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 regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.
>
> (Emphasis added).

Because she did not comply with her removal order or remain outside of the United States for two years after their marriage, the petitioner's self-petition cannot be approved pursuant to section 204(g) of the Act unless she establishes the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992); *see also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting" standard). To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner failed to establish her good-faith entry into her marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she also has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this self-petition.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner is also not eligible for immediate relative classification based on her marriage to K-O-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act

and as explained in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), because she has not complied with, nor is she exempt from, section 204(g) of the Act.

Conclusion

On appeal, the petitioner has not established a qualifying relationship with a U.S. citizen and her corresponding eligibility for immigrant classification based upon such a relationship. She has also not established joint residency with her ex-husband during the marriage, her good moral character, and that she married her ex-husband in good faith. Furthermore, she has not established that she is exempt from the bar to approval of her self-petition under section 204(g) of the Act, or is eligible for immediate relative classification based on her previous marriage to K-O-. 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.