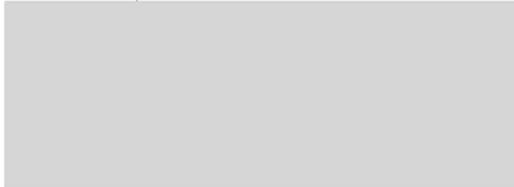




U.S. Citizenship  
and Immigration  
Services

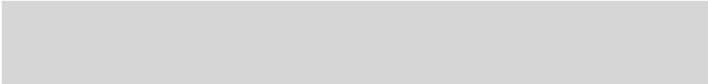
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DATE: **AUG 12 2015**

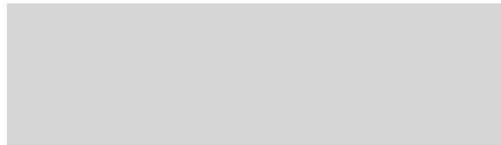
FILE #: 

PETITION RECEIPT #: 

IN RE: 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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

 Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the petition. 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 her United States citizen spouse.

The director denied the petition, finding that the petitioner did not establish a qualifying spousal relationship with a U.S. citizen or her corresponding eligibility for immediate relative classification based on such a relationship.

On appeal, the petitioner submits a statement from her counsel of record, and a family court judgment relating to her second marriage.

*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:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (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].

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 or proof of the immigration status of the lawful permanent resident abuser. 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 both the self-petitioner and the abuser.[]

### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Colombia, last entered the United States on September 19, 1992, as an B2 nonimmigrant visitor. On [REDACTED] she married her third husband, S-B-<sup>1</sup>, a U.S. citizen, in California, and they later divorced on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on May 5, 2014 based on her relationship to S-B-. The director subsequently issued a Request for Evidence (RFE) of the termination of the petitioner's prior marriage to C-D-<sup>2</sup> in order to establish a qualifying spousal relationship based on her marriage to S-B-. The petitioner 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 timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for denial.<sup>3</sup> 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 establish a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative

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

<sup>2</sup> Name is withheld to protect the individual's identity.

<sup>3</sup> Beyond the director's decision, our *de novo* review indicates that the petitioner has also not established that she entered into her marriage with S-B- in good faith and resided with him. *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) (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 also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). We will not discuss these issues here in further detail as they were not raised by the director below in either the RFE or the letter denying the petition and the petitioner was not afforded an opportunity to supplement the record to further demonstrate her eligibility. However, in any future filings in these proceedings, the petitioner is hereby notified that she must demonstrate her good-faith entry into the marriage with S-B- and her joint residence with him to establish her statutory eligibility.

classification. The record indicated that at the time the petitioner married her third husband, S-B-, in [REDACTED] her divorce from her second husband, C-D-, had not yet been finalized. According to the divorce judgment, the marriage between the petitioner and C-D- was terminated on [REDACTED] months after the petitioner's [REDACTED] marriage to S-B-. In response to the director's RFE, the petitioner submitted a petition filed with the Superior Court of California in [REDACTED] seeking to have her marriage to C-D- found null and void based on the existence of a prior marriage. However, as of the date of the director's decision, that petition was still pending with the court. The director, therefore, properly determined that the petitioner's marriage to S-B- was not legally valid, and thus, she did not have the requisite qualifying spousal relationship with a U.S. citizen based on her marriage to S-B-.

On appeal, the petitioner submits a copy of a court judgment, issued by the Superior Court of [REDACTED] on [REDACTED] declaring her marriage to C-D- null and void based on the existence of a prior marriage. The petitioner maintains that pursuant to the judgment, her marriage to C-D- never legally existed such that her marriage to S-B- was in fact legally valid at its inception. However, the petition for the dissolution of her first marriage to J-G-<sup>4</sup>, as submitted by the petitioner for the record, does not include a corresponding judgment of divorce evidencing the termination of that marriage. Further, the ongoing viability of the marriage to J-G- appears to be the basis of the [REDACTED] court judgment, nullifying the petitioner's second marriage to C-D-. A search of the public database for the Superior Court of [REDACTED] reveals that the divorce petition for the petitioner's first marriage to J-G- was never granted and remains pending with the court as of the date of this decision. As the petitioner's marriage to J-G- was never lawfully terminated, her subsequent marriage to S-B- was not legally valid. Accordingly, the petitioner has not established a qualifying spousal relationship based on her marriage to S-B-, and consequently, has also not demonstrated that she is eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on that relationship.

### *Conclusion*

On appeal, the petitioner has not overcome the grounds for denial of her petition because she has not established a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. Beyond the director's decision, the petitioner has not established her good-faith entry into marriage with S-B- and joint residence with him. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish 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, 375 (AAO 2010). Here, that burden has not been met. The appeal is dismissed.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> Name is withheld to protect the individual's identity.