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: JAN 21 2015 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 Acting Director, Vermont Service Center, (the director) denied the immigrant petition. 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 U.S. citizen spouse.

On April 2, 2013, the director denied the petition, determining that the petitioner had not established that she had a qualifying spousal relationship with a U.S. citizen or lawful permanent resident and her corresponding eligibility for immigrant classification based upon such a relationship.

On appeal, the petitioner submits a brief.

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).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Bulgaria. On September she married T-Y-, a U.S. citizen, in Bulgaria.[1] In 1999, she and T-Y- traveled to Bulgaria, where T-Y- informed her that he was still married to another woman when he married the petitioner and therefore their marriage was not valid. He took their infant son back to the United States and abandoned the petitioner in Bulgaria. The U.S. Vice Consul General at the U.S. Embassy in Bulgaria issued a transportation letter to the petitioner that allowed her to return to the United States on February 20, 1999. The petitioner provided a death certificate showing that T-Y- died on March The petitioner last entered the United States on August 29, 2005, as a conditional permanent resident. On February the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special immigrant. On February 8, 2012, the director issued a request for evidence that the petitioner is a person of good moral character and that she married T-Y- in good faith. The petitioner timely responded. The director ultimately denied the petition, finding that because the petitioner did not file the Form I-360 self-petition within two years of T-Y-'s death, she failed to establish that she had a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immigrant classification.

Qualifying Relationship

[1] Name withheld to protect identity.

The director did not dispute that the petitioner had shared a qualifying spousal relationship with a U.S. citizen in the past, even though T-Y- had engaged in bigamy. Instead, the director found that the petitioner failed to file her petition within two years after T-Y-'s death and therefore did not have a qualifying relationship within the requisite period prior to filing the self-petition.

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act allows an alien *who was* the spouse of a U.S. citizen to file a self-petition for up to two years following the death of the U.S. citizen (emphasis added). The director determined that the petitioner had not established a qualifying relationship with T-Y- because T-Y- died on March , and the Form I-360 was not filed until February nearly seven years later.

On appeal, the petitioner asserts that because she never had a valid marriage to T-Y-, she is not required to have filed her self-petition within two-years of T-Y-'s death. Specifically, the petitioner asserts that 216(c)(4)(D) of the Act allows intended spouses who were never legally married because of the abusive spouse's bigamy to remove conditions on their status if they meet the requirements of section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act. The bigamy exception provision at section 216(c)(4)(D) of the Act applies to VAWA-based hardship waivers relating to Form I-751, Petition to Remove Conditions on Residence, a separate and unrelated proceeding from the instant petition.

Regarding a petitioner whose intended spouse committed bigamy, subsection 204(a)(1)(A)(iii)(II)(aa) provides that the petitioner may still self-petition under these provisions if he or she:

> (AA) [ ] *is the spouse* of a citizen of the United States;
>
> (BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but *whose marriage* is not legitimate solely because of the bigamy of such citizen of the United States[.]

Emphasis added.

Although section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act provides limited exceptions to the two-year filing requirement for an alien *who was* the bona fide spouse of a U.S. citizen or lawful permanent resident, the self-petition must be filed within two years of the spouse's death. The petitioner has not provided any case law establishing that Congress intended similar filing provisions for self-petitioners in a bigamous marriage.

In this case, the petitioner does not meet either subsection. At filing, the petitioner was no longer the spouse of a United States citizen and her marriage was not in "existence" for purposes of section 204(a)(1)(A)(iii)(II)(aa)(AA) and (BB) of the Act; her marriage terminated with T-Y-'s death nearly seven years before she filed the instant petition. Because she did not file her self-petition within two years of T-Y-'s death she is also ineligible under 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act.

The petitioner also asserts that she is the beneficiary of an approved Form I-130 petition and her approved Form I-130 petition remains valid and converts to an approved Form I-360. In this case, even if the petitioner's Form I-130 petition remains valid, the petitioner must still demonstrate that she meets the eligibility requirements under section 204(a)(1)(A)(iii) of the Act, including establishing a qualifying relationship with her husband within two years of the filing date of the self-petition. Although U.S. Citizenship and Immigration Services (USCIS) may transfer the priority date of a previously filed immigrant visa petition to a subsequently filed self-petition in certain instances, the petitioner did not cite any statute, regulation or case law that that gives USCIS the authority to approve an otherwise unapprovable Form I-360 self-petition simply because the priority date of a prior Form I-130 petition has transferred. *Cf.* 8 C.F.R. § 204.2(h)(2).

Conclusion

Because the petitioner's spouse died nearly seven years before she filed the instant petition, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and that she is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

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, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.