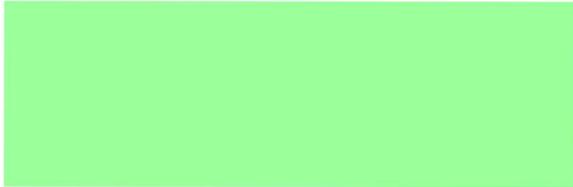
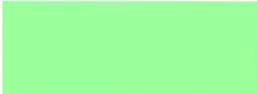


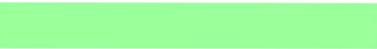
(b)(6)



**U.S. Citizenship
and Immigration
Services**

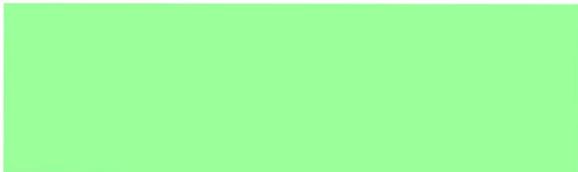


Date: **JAN 21 2015** Office: VERMONT SERVICE CENTER File: 

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:

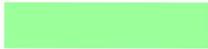
Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

⁶⁰⁷
Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Acting Director, Vermont Service Center (“acting director”), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The acting director’s decision will be withdrawn and the matter remanded for entry of a new decision.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 her U.S. citizen spouse.

The acting director denied the petition for failure to establish that the petitioner resided with her husband during their marriage and entered into the marriage in good faith. On appeal, counsel submits a brief 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).

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 for an abused spouse self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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 explained 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. 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. If the self-petition is based on a claim that the self-petitioner's child was battered or subjected to extreme cruelty committed by the citizen . . . spouse, the self-petition should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

(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 that she entered the United States in February of 1999 without being inspected, admitted, or paroled. On December [REDACTED], the petitioner married L-M¹, a United States citizen, in [REDACTED] County, Texas. The petitioner filed the instant Form I-360 self-petition on October 19, 2012. The acting director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's joint residence with her husband and her good-faith entry into their marriage. The petitioner, through counsel, responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct review on a *de novo* basis. Upon a full review of the record, the petitioner has overcome the acting director's grounds for denial. Nonetheless, the Form I-360 self-petition may not be approved because the petitioner has not established that she has a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification. She has also not established her good moral character.

Joint Residence

The record shows that the petitioner and L-M- resided together during their marriage. On the petitioner's Form I-360 self-petition, she indicated that she resided with her husband from November of [REDACTED] until April of [REDACTED] and that the last address at which they lived together was on Spring

¹ Name withheld to protect the individual's identity.

██████████ Texas. The record contains a police report showing that the petitioner reported a domestic disturbance at her house on ██████████ as well as a registration form for classes the petitioner took in the Fall of ██████████ also showing her address as ██████████. In addition, numerous letters from the petitioner's friends confirmed that the petitioner lived with her husband on ██████████. Letters from ██████████ ██████████ credibly described visiting the petitioner at the couple's house and personally observing them living together with the petitioner's daughter as a family. ██████████ stated that the petitioner and her daughter came to live with him and his wife after the petitioner separated from L-M-. Mr. ██████████ described picking up the petitioner from the home she shared with L-M- after they had fights. Mr. ██████████ further explained that every time L-M- was mad at the petitioner, L-M- would throw her possessions into the garage. A letter from a neighbor, ██████████ who lives on ██████████ attested to the couple living together beginning in the fall of ██████████. Mr. ██████████ personally observed the couple walking to the park and working in the yard together, and reiterated that in October ██████████ he saw L-M- throwing the petitioner's belongings into the garage until the police arrived. Moreover, a copy of L-M-'s 2008 tax return lists the ██████████ address and the petitioner's daughter as his dependent. Therefore, when viewed in the totality, the petitioner has established by a preponderance of the evidence that she resided with her husband during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The acting director's contrary determination is withdrawn.

Good-Faith Entry into the Marriage

In her personal statement, the petitioner gave a probative, credible, and detailed account of how she first met L-M-, their courtship, and shared experiences. She explained that she first met L-M- at the club where she worked, that he offered her a job, and that they began dating. She described specific activities they shared together, L-M-'s marriage proposal, and how she fell in love with him. She recounted their wedding and the dinner celebration afterwards. In his letter, ██████████ described attending the couple's wedding and his personal observation that the couple was very happy and spent all of their time together. ██████████ attested to witnessing L-M- take the petitioner out on dates and described probative details of spending Christmas of ██████████ with the happy couple. Similarly, ██████████ recounted the petitioner telling her how good things were with L-M- and that the petitioner seemed very happy and in love. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with L-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The acting director's decision to the contrary will be withdrawn.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The appeal cannot be sustained, however, because beyond the acting director's decision, the petitioner has not established she has a qualifying spousal relationship with a U.S. citizen. According to the Form I-360 self-petition, L-M- has been married three times. However, the petitioner did not provide evidence of the termination of his prior marriages as required by 8 C.F.R. § 204.2(c)(2)(ii). 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.

Good Moral Character

Also beyond the acting director's decision, the petitioner has not established 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 October 2009 and ending in October 2012). In this case, the petitioner has not addressed her good moral character and has not submitted local police clearances or state-issued criminal background checks, or provided an explanation for the lack of such a clearance for the requisite period. Accordingly, she has failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

Although the petitioner has overcome the acting director's grounds for denial, additional grounds preclude denial of the petition. Specifically, 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 her good moral character. Accordingly, we remand the matter to the acting director for entry of a new decision into the record. The acting director may request other additional evidence deemed warranted and should allow the petitioner to submit additional evidence within a reasonable period of time.

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.

ORDER: The acting director's decision, dated November 21, 2013, 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.