U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 2 8 2015

FILE #: A

PETITION RECEIPT #: I

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) 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 Acting Center 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 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 a United States citizen.

The director denied the petition because the petitioner has not established that she is a person of good moral character. Beyond the decision of the director, the petitioner has not established a qualifying spousal relationship and corresponding eligibility for immediate relative classification.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 101(f) provides that "[n]o person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was . . . (7) "one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period. "

In making a determination of a petitioner's good moral character, section 204(a)(1)(C), 8 U.S.C. § 1154(a)(1)(C), states:

> Notwithstanding section 1101(f) of this title, an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 1182(a) of this title or deportability under section 1227(a) of this title shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 explained further 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 20l(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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> (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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary guidelines for a petition under section 204(a)(1)(B)(ii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

> *Evidence for a spousal self-petition –*
>
> (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 . . .
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> * * *
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> (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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who entered the United States as a visitor on September 30, 1989. The petitioner married E-C-,[1] a U.S. citizen, on The petitioner became a lawful permanent resident of the United States on August 13, 1990. The petitioner was ordered removed from the United States on May 21, 2015, which terminated her lawful permanent resident status. The petitioner and E-C- divorced on The petitioner filed the instant Form I-360 on September 4, 2013. The director subsequently issued a Request for Evidence (RFE) of the petitioner's divorce decree and evidence of the petitioner's good moral character. The petitioner responded with additional evidence which the director found insufficient, and the director denied the petition. The petitioner timely appealed.

The AAO reviews these proceedings *de novo*. A full review of the record does not establish the petitoner's eligibility. The petitioner has not established that she is a person of good moral character. Beyond the decision of the director, the petitioner has not established a qualifying spousal relationship and corresponding eligibility for immediate relative classification.

Good Moral Character

The record reflects that on November 15, 2010, the petitioner was convicted of aggravated assault under subpart (A)(2) of Arizona Revised Statutes Annotated (Ariz. Rev. Stat. Ann.) § 13–1203 ("[i]ntentionally placing another person in reasonable apprehension of imminent physical injury"), subpart (A)(2) of Ariz. Rev. Stat. Ann. § 13–1204(A)(2) (use of "a deadly weapon or other dangerous instrument"), and 13-1204(A)(8)(a) (commits assault knowing or having reason to know that the victim is a "peace officer"). The petitioner was sentenced to five years imprisonment. The

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

director determined that the petitioner's confinement to a penal institution for more than 180 days barred a finding of the petitioner's good moral character under section 101(f)(7) of the Act.

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) states that a petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Section 101(f)(7) of the Act, 8 U.S.C. § 1101(f)(7), states that no person shall be found to have good moral character if her or she, during the period for which good moral character is required to be established, was confined in a penal institution for over 180 days as a result of conviction.

On appeal, the petitioner argues that section 204(a)(1)(C) of the Act provides that an act or conviction that otherwise would bar good moral character under section 101(f) of the Act may be excused if it is "waivable" and if the act or conviction was "connected" to the petitioner's having been battered or subjected to extreme cruelty. We do not reach the issue of whether the petitioner's conviction is waivable because her period of confinement alone bars her good moral character. Although certain convictions may be waived, there is no corresponding waiver for convictions associated with a period of confinement in a penal institution, and this is reflected in the U.S. Citizenship and Immigration Services (USCIS) memorandum of Willaim R. Yates, Associate Director of Operations, entitled *Determinations of Good Moral Character in the VAWA-Based Self-Petitions*, issued on January 19, 2005. Therefore, section 204(a)(1)(C) of the Act is inapplicable here. As the petitioner's period of confinement exceeded 180 days, she is precluded from establishing her good moral character under section 101(f)(7) of the Act and is, therefore, ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Qualifying Spousal Relationship and Corresponding Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner has not established a qualifying spousal relationship and corresponding eligibility for immediate relative classification.

Under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, a former spouse may file a petition for up to two years following the termination of a qualifying marriage. There is no exception to the two-year limitation. The petitioner's divorce from E-C- took legal effect on May 29, 2009, and she did not file the instant petition until September 4, 2013. The petitioner indicated that as a lawful permanent resident she was not able to file the petition within the two-year period after her divorce. There is no exception, however, to the two-year filing limitation, and we lack the authority to waive this statutory deadline. Accordingly, the petitioner did not have a qualifying relationship with E-C- at the time of filing, and was ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Conclusion

The petitioner has not established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. Beyond the decision of the director, the petitioner has not

established a qualifying spousal relationship and corresponding eligibility for immediate relative classification.

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). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.