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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JUN 1 6 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) 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 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 United States citizen spouse.

The director denied the petition because the petitioner failed to establish that she had a qualifying relationship as the spouse of a U.S. citizen and was eligible for immigrant classification based upon that relationship because she married another person prior to the filing of the Form I-360 self-petition. The director also noted that the evidence in the record does not sufficiently demonstrate that petitioner possesses good moral character but, because the petition was deniable based on the lack of a qualifying relationship, the director did not address the good moral character issues in detail. On appeal, the petitioner indicated that a brief and/or additional evidence was attached to the Notice of Appeal (Form I-290B) but, in fact, no such brief and/or additional evidence was attached.

*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 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 . . . . It must also be accompanied by evidence of the relationship. . . .

Regarding a qualifying spousal relationship for a self-petitioner, the regulation at 8 C.F.R. § 204.2(c)(1)(ii) further states, in pertinent part, "The self-petitioner's remarriage . . .will be a basis for the denial of a pending self-petition."

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, married E-J-[1], a United States citizen, on 2000 and the two were divorced on 2012. The petitioner subsequently married G-H-[2] on 2012. The petitioner filed the instant Form I-360 on March 14, 2014. The director stated that, due to her remarriage, the petitioner did not demonstrate the existence of a qualifying relationship to a U.S. citizen and her corresponding eligibility for immediate relative classification on the basis of such a relationship.

The AAO conducts appellate review on a *de novo* basis. Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

The director correctly determined that the record below failed to demonstrate that the petitioner had a qualifying relationship with a United States citizen and was eligible for immediate relative classification. The regulation at 8 C.F.R. § 204.2(c)(1)(ii) specifically states:

> After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

The relevant evidence in the record below contains a copy of the petitioner's marriage certificate to E-J-, a copy of the petitioner's final order of divorce from E-J-, and a copy of the petitioner's marriage certificate to G-H-. The record shows that prior to the filing of the petitioner's Form I-360, the petitioner was remarried to G-H-.

On appeal, the petitioner asserts that, because the Form I-360 was not pending at the time of her

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

remarriage to G-H-, there is no basis for the denial of her self-petition. The petitioner's remarriage to G-H- prior to filing the Form I-360 does not negate the application of 8 C.F.R. § 204.2(c)(1)(ii). In subsequent amendments to the original Violence Against Women Act (VAWA) statutory provisions at section 204 of the Act, Congress has left alone United States Citizenship and Immigration Services' (USCIS) interpretation that remarriage prior to petition approval requires denial.[3] The legislative history supports the director's interpretation that remarriage at any point prior to filing or while the Form I-360 is pending negates the need for VAWA protection. *See Delmas v. Gonzalez*, 422 F.Supp. 2d 1299 (S.D. Fla. 2005) (alien's remarriage prior to filing self-petition was disqualifying).

The petitioner is mistaken in her assertion that her remarriage prior to filing the Form I-360 self-petition is not disqualifying. Congress specifically declined to extend eligibility to self-petitioners who divorce their abusers and remarry prior to the approval of their self-petitions. The petitioner's remarriage demonstrates that she no longer qualifies for VAWA protection. Accordingly, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act due to her remarriage to G-H-.[4]

*Conclusion*

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

**ORDER:** The appeal is dismissed.

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[3] *See Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 9(Oct. 28, 2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, (VAWA 2005); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (VAWA 2013).

[4] This decision does not address the petitioner's good moral character because that issue was not discussed in detail in the director's denial and, while the petitioner indicated on the Form I-290B that she might avail herself of "the opportunity to prove her good moral character at a later date," she provided no further information.