



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF P-S-A-

DATE: FEB. 9, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM 1-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as an immigrant abused spouse of a U.S. citizen or lawful permanent resident. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii) and § 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she is an alien: "who was a bona fide spouse of a United States citizen within the past 2 years and . . . who 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).<sup>1</sup>

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

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<sup>1</sup> Section 204(a)(1)(B)(ii)(I) of the Act is the corresponding statute pertaining to abused spouses of lawful permanent residents of the United States.

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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 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 . . . the self-petitioner . . . .

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico. She married F-G-<sup>2</sup> on [REDACTED] 2002, in [REDACTED] California. The Petitioner and F-G- were divorced on [REDACTED] 2009. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 24, 2012. The Director denied the Form I-360 and the Petitioner filed a motion to reconsider which the Director dismissed. The Petitioner timely appealed.

## III. ANALYSIS

We review these proceedings *de novo*. The Petitioner's claims on appeal do not overcome the grounds for denial. The appeal will be dismissed for the following reasons.

### A. Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The Director correctly determined that the Petitioner did not establish a qualifying relationship with a U.S. citizen or lawful permanent resident spouse and was eligible for immigrant classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and 204(a)(1)(B)(ii)(II)(aa) of the Act.<sup>3</sup> The Petitioner filed her Form I-360 more than two years after she and F-G- were divorced. We lack the authority to waive the statutory two-year, post-termination filing period of sections 204(a)(1)(A)(iii)(II)(aa)(CC) and 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act. Consequently, the Petitioner

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

<sup>3</sup> The Director also determined, without discussion, that the Petitioner did not establish that she resided with her former husband. As the Petitioner is otherwise not eligible for the benefit sought, this issue will not be addressed on appeal.

had no qualifying relationship with F-G- and is ineligible for immediate relative or immigrant classification based on such a relationship as required by the Act.

Beyond the Director's decision, the Petitioner did not demonstrate that F-G- is a U.S. citizen or a lawful permanent resident of the United States.<sup>4</sup> The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the Petitioner submit evidence of F-G-'s U.S. citizenship or lawful permanent resident status. On the Form I-360, the Petitioner did not indicate whether F-G- is a U.S. citizen or lawful permanent resident. The Petitioner's marriage certificate and her children's birth certificates indicate that F-G- was born in Mexico. The remaining relevant evidence in the record includes a Mexican voter registration card and a real estate business card for an individual with a different last name from F-G-. It is unclear whether the named individual on the cards is F-G-, and the certificates and cards do not demonstrate that F-G- is a U.S. citizen or lawful permanent resident.

#### IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 appeal is dismissed.

Cite as *Matter of P-S-A-*, ID# 15443 (AAO Feb. 9, 2016)

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<sup>4</sup> 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 *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).