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

U.S. Citizenship
and Immigration
Services

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 09 2010

IN RE: Petitioner: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

[redacted]
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DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

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.

On June 21, 2010, the director denied the petition, determining that the petitioner had not established that she had resided with the claimed abusive United States citizen spouse. The petitioner submits a Form I-290B, Notice of Appeal or Motion, and documents in support of the appeal.[1]

Section 204(a)(1)(A)(iii) 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 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 are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (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.
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> * * *
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> (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,

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[1] The petitioner submitted two I-290B appeal forms [redacted] in error. This decision, therefore, relates to both I-290B forms.

> 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:

> *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.
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> * * *
>
> (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.
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> * * *
>
> (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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica. She claims she entered the United States in or about August 1987 when she was six years old. On February 20, 2004, the petitioner married O-G-[2], the claimed abusive United States citizen spouse. On November 13, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. She contemporaneously filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and a Form G-325A, Biographic Information form. On the Form G-325A, the petitioner listed her addresses in pertinent part as: (1) [redacted] in the Bronx from June 1996 to September 2004; (2) [redacted] from April 2004 to July 2008; (3) and her current address. The Form G-325A is signed and dated November 9, 2009.

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

Residence

On the Form I-360, the petitioner claimed that she resided with O-G- from January 2004 to June 2008 and that their last address was [redacted]. The record also included the petitioner's marriage certificate showing that both the petitioner and O-G- resided at [redacted] on the date of the marriage. The petitioner's child's birth certificate also identifies the petitioner's address as [redacted] on the date of the child's birth on December 4, 2004. The petitioner initially did not provide a statement or documents establishing that she resided with O-G-. In response to the director's request for evidence (RFE) on this issue, the petitioner provided her April 9, 2010 statement. The petitioner stated: that she visited the family home of O-G-'s frequently and initially met O-G- through his family in 2003; that his family thought they were perfect together and so encouraged the two to marry; that she married O-G- on February 20, 2004; that at the beginning of their marriage the couple lived with his parents at [redacted] and that in "May 2004 two months after marriage," she learned that O-G- would be serving time at a correctional facility for two years. The petitioner stated further: that when O-G- was released from prison in December 2006, she had saved enough money to sublet a small two bedroom apartment at [redacted] The remaining portion of the petitioner's statement relates to the claimed abuse.

The record also included an April 7, 2010 letter written on The New York Women's Foundation letterhead, in which the writer indicates that two years prior to the date of the letter, the petitioner reached out seeking assistance to remove herself from an abusive marital relationship. The letter writer noted that the petitioner was not placed in the organization's safe house two blocks from the place the petitioner lived with her spouse and child but instead was moved to the Bronx.

Based on this information, the director observed that the petitioner had not submitted any documentary evidence corroborating her personal statement that the couple resided together. The director denied the petition as the record did not include satisfactory evidence demonstrating that she had resided with the claimed abusive spouse.

On appeal, the petitioner submits a June 25, 2010 personal statement. The petitioner indicates that the apartment the couple lived in was a subleased apartment and that the rent was paid on the sublessor's behalf. The petitioner explained: that the couple did not own anything in their names; that they did not have bank accounts because they did not have proper credentials and O-G- had a lot of student loans he believed would be seized or frozen if he placed money in a bank account; that the utility bills were in the name of the sublessor; and that the couple did not have insurance policies.

The petitioner also provided an affidavit signed by [redacted] who declares: that he resides at [redacted] and has resided there for the past 12 years; that he knew O-G- lived at [redacted] two blocks from his house; that O-G- approached him in January 2007 looking for a place to live with his wife and children; and that as he was moving to Brooklyn but wanted to keep his apartment, he sublet the apartment. [redacted] indicates that the petitioner and O-G- "resided at [redacted] . . . for a period of 8-12 months." Although the

affidavit is dated July 7, 2007, it is not notarized until July 15, 2010. The petitioner also provides some receipts showing that [redacted] had paid rent for the [redacted] premises.

The petitioner also submits a "Note of Issue – Contested Divorce" signed by O-G-'s attorney which is undated and which lists the petitioner as plaintiff and O-G- as the defendant. The document includes [redacted] as one of the petitioner's and O-G-'s listed addresses in the past three years.

Preliminarily, the AAO observes that the petitioner is not required to produce corroborating documentation to establish that she resided with the claimed abusive spouse. The director's determination to the contrary is withdrawn. Upon review of the record, however, the petitioner has not provided consistent information regarding her claimed residence with O-G-. The petitioner indicates that she lived at the [redacted] address for four years (April 2004 to July 2008) on the Form G-325A she submitted to United States Citizenship and Immigration Services (USCIS) that accompanied her Form I-485. The petitioner does not indicate that she ever lived at the [redacted] address on her Form G-325A, contrary to the information she provided in her April 9, 2010 statement in which she indicated that she and O-G- lived with his parents at this address prior to his incarceration. In addition, the petitioner does not explain why she indicated that she lived at the [redacted] address for four years on the Form G-325A, but indicated in her April 9, 2010 statement that she saved enough money to sublet an apartment upon O-G-'s release from prison in December 2006. The petitioner's April 9, 2010 statement also presents a different version of events than described by [redacted] in his affidavit, in that [redacted] declared: that he was approached by O-G- not the petitioner; and that the couple resided at the premises for "8-12 months" at some point in time.

The inconsistencies in the petitioner's testimony regarding her claimed residence(s) with O-G- significantly undermine the credibility of her testimony. The petitioner's testimony does not present a probative, consistent chronological timeline of her residences with O-G-. There is insufficient probative, consistent information in her testimony to conclude that she resided with O-G-. The receipts submitted on appeal do not substantiate that the petitioner paid the rent on the premises and the April 7, 2010 letter written on The New York Women's Foundation letterhead does not include an address or testimony indicating that the letter writer had personal knowledge of the petitioner's address(es). Upon review of the divorce document, the document is undated and lists a number of addresses for both the petitioner and for O-G-. The document does not indicate when the petitioner or O-G- lived at any of the listed addresses. Thus, there is insufficient information in the record to establish that the couple jointly resided at any of the addresses listed. There is insufficient probative, consistent testimony establishing the petitioner jointly resided with O-G- during the qualifying marriage and there are no other indicia of a joint residence to assist in establishing this element. The petitioner has failed to establish that she resided with O-G- as required to establish eligibility for this benefit.

Qualifying Relationship

Beyond the decision of the director, the record includes evidence that divorce proceedings were instituted at some point; however, the record does not indicate if the divorce was finalized and if so

the date the final decree was issued and recorded. Without this information it is not possible to conclude that the petitioner had a qualifying relationship with the claimed abusive spouse when the petition was filed. For this additional reason, the petition will be denied.

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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed.