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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

[redacted]

B9

Date: APR 20 2012 Office: VERMONT SERVICE CENTER File: [redacted]

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 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

DISCUSSION: The Director, Vermont Service Center, ("the director") denied the immigrant visa petition and 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner: has a qualifying relationship as the spouse of a U.S. citizen; is eligible for immigrant classification based upon that relationship; resided with her U.S. citizen spouse; and that he subjected her to battery or extreme cruelty during the marriage.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

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 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 are further explicated 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.
>
> (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be

> considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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:

> *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, and proof of the termination of all prior marriages . . . .
>
> (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.
>
> (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Pertinent Facts and Procedural History

The petitioner is a citizen of Uganda who was admitted to the United States on December 1, 1998 as a J-1 exchange visitor. On May 4, 2006, the petitioner filed a Form I-360 based on her marriage to

her second husband D-T-[1], a U.S. citizen. The petition was approved on February 20, 2007. On March 30, 2009, the director informed the petitioner of the intent to revoke the approval of the petition based on the determination that her marriage to D-T- was not valid for immigration purposes because she had not terminated her marriage to her first husband, H-K-. The petitioner failed to respond to the notice of intent to revoke (NOIR), and on May 6, 2009, the director revoked the approval of the petition.

The petitioner obtained a divorce from H-K- on February 5, 2008. She filed the instant Form I-360 on April 16, 2010 based on a common law marriage with D-T-. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's qualifying relationship as the spouse of a U.S. citizen, residence with her spouse, and battery or extreme cruelty during the marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome all of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages, and evidence of the citizenship of the U.S. citizen spouse.

The petitioner initially submitted a marriage certificate reflecting that she wed D-T- on February 10, 2000 in Denver, Colorado. The petitioner also submitted two death certificates from Kampala, Uganda reflecting that H-K- died prior to her marriage to D-T-. In the NOIR, the director informed the petitioner that an investigation conducted by the U.S. Embassy in Uganda revealed that H-K- is not deceased, and the death certificates are considered invalid for immigration purposes. The director subsequently revoked the approval of the petitioner's first Form I-360 based on the determination that she did not have a valid marriage to D-T-.

The petitioner submitted with her second Form I-360 the following relevant documents: a verification of dissolution of marriage from Colorado reflecting that she was issued a divorce decree on February 5, 2008 for the termination of her marriage to H-K-; an application for marriage issued to her and D-T- in Arapahoe County, Colorado on April 7, 2009; a petition she filed in the District Court of Denver, Colorado on November 24, 2010 for a legal separation from D-T-; and a self-declaration issued on December 29, 2010. The petitioner stated in her declaration that she separated from D-T- in December

[1] Names withheld to protect the individuals' identity.

2005 and then initiated divorce proceedings.[2] She recalled that in January 2009 she reunited with D-T- and they resided together at her home and D-T-'s apartment. The petitioner stated that they began having problems in their relationship, and in July 2010 they ended their romantic relationship.

In denying the petition, the director found that the petitioner did not register her marriage in Colorado and she had not submitted sufficient evidence to establish that she had a common law marriage in Colorado. The director determined that the petitioner failed to establish that she had a qualifying relationship with a U.S. citizen and was eligible for immigrant classification based upon that relationship.

Colorado recognizes marriages contracted without formal ceremony, or common law marriages. Section 14-2-104(3) of the Colorado Revised Statutes provides that "[n]othing in this section shall be deemed to repeal or render invalid any otherwise valid common law marriage between one man and one woman." Colorado case law similarly provides that "[u]pon dissolution of a subsisting marriage, an intended marriage contracted in good faith by a party thereto prior to the removal of the disability is rendered valid and binding by the continued cohabitation of the parties to such union, as the original intention to become husband and wife is presumed to continue so as to effectuate a common-law marriage." *Davis v. People*, 264 P. 658, 659 (1928)(citations omitted).

In *People v. Lucero*, the Supreme Court of Colorado determined that "[a] common law marriage occurs where the parties consent to be husband and wife and there is a mutual and open assumption of a marital relationship." 747 P.2d 660,663 (Colo. 1987). The court stated that conduct in the form of mutual public acknowledgment of the marital relationship is essential to establish a common law marriage. *Id.* at 663-64. The court noted that for purposes of proving common law marriage, the parties' consent may be proven by, or presumed from, evidence of cohabitation as husband and wife and general repute as husband and wife. *Id.* at 664-65.

On appeal, the petitioner submits a court order for a dissolution of marriage from the District Court of Denver, Colorado, dated August 19, 2011. In addressing the issue of common law marriage, the court stated that the petitioner and her witness testified that D-T- represented himself as married to the petitioner from April 2009 into the summer of 2009. The court reviewed the testimony from both parties and found "clear, consistent, and convincing evidence of a common law marriage" between the petitioner and D-T-. The court specifically found that "a) there was a mutual intent to be married; b) the Parties held themselves out to be married; c) they have joint children; d) there was incentive for them to be in a marital relationship; and d) that they co-habited." The court ordered the common law marriage between the petitioner and D-T- to be dissolved.

The Board of Immigration Appeals (BIA) has determined that "the validity of a marriage is determined according to the law of the place of celebration." *Matter of Gamero*, 14 I. & N. Dec. 674 (BIA 1974). Because Colorado has recognized the petitioner's entry into a common law marriage with D-T- from April 2009 until the summer of 2009, the petitioner has established that she had a

[2] On appeal, counsel states that the petitioner received a decree of dissolution of marriage from D-T- on August 1, 2006, which was later converted to a declaration of invalidity on February 5, 2008. However, this document is not contained in the record of proceedings.

valid marriage to D-T- during that time period. Therefore, the petitioner has established that she has 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),(cc) of the Act. The director's contrary determination is withdrawn.

Joint Residence

We find no error in the director's determination that the petitioner failed to establish her residence with D-T- during their common law marriage. The petitioner stated on her Form I-360 that she resided with D-T- from August 1999 until December 2005 and March 2009 until January 2010 and their last place of residence was in Centennial, Colorado. The petitioner initially submitted copies of: 2002, 2003 and 2004 tax returns she jointly filed with her second husband; joint bank statements issued in 2005 and 2006; joint telephone bills issued in 2005 and 2006; a joint utility bill issued in 2003; a health insurance card reflecting joint coverage issued in April 2005; a self-statement she filed with the first Form I-360, dated March 14, 2006; and a police report of a domestic violence incident, dated September 27, 2004. Although these documents reflect that the petitioner resided with D-T- prior to her divorce from H-K-, they do not reflect that she resided with him during their common law marriage in 2009.

The director correctly determined that the record reflected that the petitioner and D-T- maintained separated residences and did not reside together during the qualifying relationship. In response to the RFE, the petitioner submitted a declaration, dated December 29, 2010, in which she stated that she and D-T- reconciled in January 2009 and they "began to live both at the house and his apartment, going back and forth depending on what was convenient in March 2009." She recalled that "[f]rom May 2009 to July 2010, we seemed to get back together briefly and then break up again. He would live with me back and forth at my house and his apartment until January 2010, but it was rocky." The application for marriage filed by the petitioner and D-T- is dated April 7, 2009 and reflects that they were maintaining separate residences as of that date.

The petitioner also submitted letters from her friends, [redacted] stated that the petitioner "shared that they were pretty much spending all nights together at her house or his apartment depending on her work hours." [redacted]s statement reflects that the petitioner and D-T- maintained separated residences during their common law marriage. [redacted] stated that she learned in 2009 that the petitioner and D-T- "were living together again." However, [redacted] does not describe having personal knowledge of the petitioner's joint residence with D-T-.

On appeal, counsel asserts that since the district court determined that the petitioner and D-T- co-habited, she has demonstrated joint residence with D-T-. Although we are bound by the district court's determination of the validity of the petitioner's common law marriage, our determination of an alien's place of residence is according to the statutory definition under the Act and is not based on a particular state's definition of co-habitation. The Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The petitioner's statement does not provide consistent and probative information sufficient to establish that she and T-B- shared a principal

dwelling place during their common law marriage. Accordingly, the record does not establish that the petitioner resided with her second husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record fails to establish that the petitioner's second husband subjected her to battery or extreme cruelty during their common law marriage. The petitioner initially submitted a statement she previously filed with her first Form I-360. The statement is dated March 14, 2006, prior to her common law marriage with D-T-, and describes their relationship from February 10, 2000 until their separation in December 2005. The director requested additional evidence of abuse in the RFE, finding that the petitioner's March 14, 2006 statement discusses incidents prior to her legal marriage with D-T-. In response to the RFE, the petitioner submitted a declaration, dated December 29, 2010, in which she recounted incidents in her relationship with D-T- prior to their marriage. She stated that they separated in December 2005 and she and her first husband, H-K-, divorced in February 2008. The petitioner recalled that in January 2009, she and D-T- reconciled and applied for a marriage license a few months later in April 2009. She recalled that D-T- threatened to no longer support her immigrant petition or continue with their marriage if she did not give him money. She stated that on May 5, 2009, D-T- informed her that she would have to pay him from $8,000 to $10,000 to continue with their marriage. She stated that when her romantic relationship with D-T- ended in July 2010 and he asked her for money to sign documents initiating divorce proceedings. The petitioner's statements do not indicate that during the period of her common law marriage to D-T-, he battered her or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted a police report from the Arapahoe County, Colorado, Sheriff's Office, dated September 27, 2004, which contains a narrative that states the petitioner and D-T- had an argument and when he attempted to take their daughter out of the house, the petitioner tried to call the police. The narrative further provides that D-T- grabbed the telephone out of her hand, resulting in a cut on her middle finger. The record contains a Colorado Court Database print-out, which reflects that D-T was arrested and charged with domestic violence assault in the third degree and obstruction of telephone service. These charges were dismissed on April 18, 2005. These documents corroborate the petitioner's account of having been battered by D-T- in September 2004, but they do not relate to events that occurred during her common law marriage to him over four years later.

The statements from the petitioner's friends also fail to demonstrate that D-T- subjected the petitioner to battery or extreme cruelty during their common law marriage. [redacted] stated that the petitioner informed her that D-T- "did not want to be married and only was interested in money, so they were breaking up." [redacted] stated that the petitioner was frustrated because "[D-T-'s] mother would interfere with their relationship and his lack of motivation to advance in career achievement and education." These statements do not indicate that D-T- battered the petitioner or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulations.

On appeal, counsel asserts that D-T-'s "extortion attempt and demands for money constituted extreme cruelty within the meaning of the VAWA provisions." While D-T-'s threats to leave the petitioner

and no longer support her immigrant petition may be a form of extreme cruelty in certain situations, in this case, the petitioner has not shown that the threats were part of a pattern of coercive control or otherwise constituted psychological abuse. Counsel further asserts that D-T-'s behavior during their marriage "should be properly viewed as fitting within an overall pattern of violence extending backwards for several years." Nonetheless, "qualifying abuse . . . must have taken place during the self-petitioner's marriage to the abuser." 8 C.F.R. § 204.2(c)(1)(vi). The petitioner in her declaration does not describe being threatened with violence, or fearing that D-T- would become violent based on past incidents, during the period of their common law marriage. The statements of the petitioner and her friends focus on D-T-'s demands for money, but their letters do not establish that his behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that D-T- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that she has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship. However, she has failed to overcome the director's determinations that she did not establish her joint residence with D-T- and that he subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.