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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

AUG 0 2 2013

Date: Office: VERMONT SERVICE CENTER [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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, ("the director") denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decision of the AAO will be affirmed.

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 former U.S. citizen spouse.

On May 23, 2012, the director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that she and her former husband shared a joint residence; (2) that her former husband subjected her to battery or extreme cruelty during their marriage; and (3) that she married her former husband in good faith. On March 9, 2013, the AAO affirmed the director's decision and determined beyond the decision of the director that the petitioner failed to demonstrate that she had a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based upon that relationship.

On motion, counsel submits 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).

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 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 or the self-petitioner's child and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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, 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 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.

* * *

(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.
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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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who entered the United States on December 22, 2007, as a nonimmigrant visitor. The petitioner married J-R-, a U.S. citizen, on November 15, 2007 in New York, New York.[1] Their marriage was dissolved in a divorce on November 8, 2010. The petitioner filed an initial Form I-360 on September 15, 2009, which was approved in September 2010. The approval of the petition was revoked on notice on May 23, 2012. The petitioner filed the instant Form I-360 on December 11, 2010, which is now before the AAO on a motion to reopen its prior decision dismissing the appeal. The motion is granted.

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 fails to establish the petitioner's eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

Entry into the Marriage in Good Faith

In its March 9, 2013 decision, the AAO reviewed the evidence of record and determined that the petitioner did not establish that she married her former husband in good faith. In reaching this determination, the AAO found that the petitioner's affidavit failed to describe the former couple's wedding ceremony, joint residence, or any of their shared experiences, apart from the alleged abuse. The AAO also found that the supporting letters from the petitioner's friends and family members briefly discussed the petitioner's marriage, but provided no probative information regarding the petitioner's good faith in entering the relationship.

The AAO noted that the petitioner submitted a letter from who stated that she was the petitioner and J-R-'s landlord from 2007 until 2009 at an apartment in the Bronx, New York. However, testimony is undermined by derogatory evidence in the record, which was the basis of the revocation of the approval of the petitioner's prior Form I-360. The record reflects that on February 7, 2011, officers from U.S. Citizenship and Immigration Services (USCIS) visited Ms.

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

signed a sworn statement in the presence of the USCIS officers in which she declared that she was the owner of the aforementioned apartment, but J-R- had never resided at her property. The petitioner was given notice of this derogatory information in the notice of intent to revoke (NOIR) the approval of her prior Form I-360 petition and in the denial notice for the instant Form I-360 petition.

The AAO determined that the probative value of the petitioner's supporting documents, including photographs, life insurance policies, tax returns, bank account statements, cable and telephone bills, and greeting cards, was undermined by additional derogatory evidence in the record, of which the petitioner was made aware in both the NOIR on her prior Form I-360 and the denial notice on her current Form I-360. The petitioner indicated on the Form I-360 that she resided with J-R- from 2007 until May 2009. She submitted copies of rent receipts and a lease for the apartment. However, on February 7, 2011, USCIS officers visited another apartment shown in public records as J-R-'s residence since August 2001. The officers spoke with J-R-'s sister and a family friend who stated that J-R- had been residing at the apartment for the previous three years, but was currently homeless and addicted to drugs and alcohol. The officers noted that J-R-'s sister and friend did not seem to know about J-R-'s marriage.

The AAO stated that the NOIR and denial notice also informed the petitioner that on February 8, 2011, USCIS officers visited at his place of employment. had previously completed a Form I-864, Affidavit of Support, on behalf of the petitioner and her two children. stated that he has never met J-R- when he was shown a photograph of him. He further stated that he knows that J-R- is not related to the petitioner's family and is not the stepfather of the petitioner's children. indicated that he knows the petitioner's children's biological father. He signed a sworn statement in the presence of USCIS officers in which he declared that he has never met or known J-R- and he withdrew the Form I-864 he completed on behalf of the petitioner.

Counsel submitted on appeal a Certificate of Group Health Plan Coverage and explanations of medical benefits, which reflect that J-R- was a dependent on the petitioner's health insurance. The AAO found that the Certificate of Group Health Plan Coverage showed that the petitioner's former husband was added as a beneficiary on April 11, 2010, almost one year after his separation from the petitioner. The AAO similarly found that the explanations of medical benefits were issued for medical service in August 2010, over one year after the petitioner's separation from J-R-. Counsel also submitted supporting letters from in which they refer to photographs that they allege depict with the petitioner's former husband. The AAO reviewed the letters and concluded that even if the photographs demonstrated that knew the petitioner's former husband, the petitioner still had not established her good faith entry into the marriage.

On motion, counsel asserts that "testimony was obtained because of threat by the United States Department of Homeland Security." Counsel, however, does not submit an affidavit from or any other evidence to support his assertion. Counsel resubmits the following previously filed evidence: cable bills; a telephone bill; a bank statement; an Internal Revenue Service (IRS) transcript for the year 2007; a certificate for health plan coverage; and an explanation of medical benefits. These documents were discussed in our prior decision, incorporated here by reference. Counsel submits as new, additional evidence: a tax return for the year 2009; a letter from the

petitioner's former brother-in-law, and letters from the petitioner's friends, Thomas The 2009 tax return is of little probative value as it reflects that the petitioner filed it separately from J-R-. The letters from and also provide no probative information regarding the petitioner's good faith in entering the relationship. The individuals briefly attest to knowing the petitioner and J-R- as a married couple, but they do not provide detailed information establishing their personal knowledge of the relationship. Accordingly, a *de novo* review of the record does not establish that the petitioner entered into marriage with her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

In its March 9, 2013 decision, the AAO reviewed the evidence of record and also determined that it failed to demonstrate that the petitioner resided with J-R-. The AAO stated that although the petitioner submitted copies of rent receipts and a lease for the apartment signed by the purported landlord, derogatory information in the file undermined the credibility of this evidence. As discussed, on February 7, 2011, USCIS officers visited Ms. Olatunji and she signed a sworn statement that she was the owner of the apartment, but J-R- had never resided at her property. The AAO further found that in the petitioner's affidavit she failed to describe her home with J-R- or their shared residential routines in any detail. The AAO also noted that the petitioner's friends and family members also did not describe any visit to the couple's residence in probative detail and the photographs submitted by the petitioner were not identified as having been taken at any specific residence that she shared with J-R-.

On motion, counsel references previously filed evidence, which was discussed in our prior decision, incorporated here by reference. Although the letters from mention that they visited the petitioner and J-R- at their apartment during the couple's marriage, they do not describe any particular visit or social occasion in detail. No other additional evidence of the couple's joint residence was provided on motion. Accordingly, a *de novo* review of the record does not establish that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In its March 9, 2013 decision, the AAO reviewed the evidence of record and determined that the petitioner had also failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage. The relevant evidence submitted below and on appeal was discussed in our prior decision, incorporated here by reference. The AAO concluded that the petitioner failed to provide a consistent, credible and detailed account of the alleged abuse she suffered during her marriage to J-R-. The AAO noted that the petitioner's friends discussed incidents that the petitioner did not mention in her self-affidavit. The AAO also noted that the other supporting documentation, including a letter from a social services organization and the petitioner's request for a temporary restraining order, lacked probative details of the alleged abuse. The AAO determined that although the psychological assessments discussed the alleged abuse in detail, the evaluations did not overcome the conflicting

testimony in the record regarding the petitioner's shared residence with J-R-, which is where the petitioner claimed she was subjected to abuse.

On motion, counsel asserts "[t]he abusiveness of the spouse has been fully documented." Counsel, however, fails to identify any specific, erroneous conclusion of law or statement of fact in the AAO's decision. Accordingly, a *de novo* review of the record does not established that the petitioner's former husband subjected her or either of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.

Conclusion

On motion, the petitioner has failed to establish that: (1) she had a qualifying relationship with a U.S. citizen; (2) is eligible for immediate relative classification based upon that relationship; (3) she entered into marriage with her former husband in good faith; (4) they resided together; and (5) 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 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 motion is granted. The AAO's decision to dismiss the appeal, dated March 9, 2013, is affirmed.