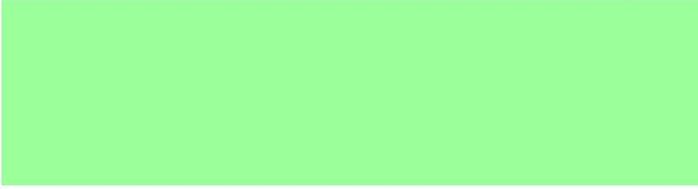




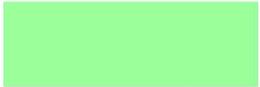
U.S. Citizenship
and Immigration
Services

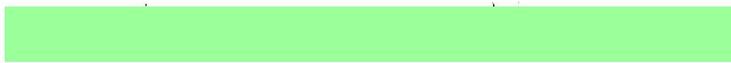
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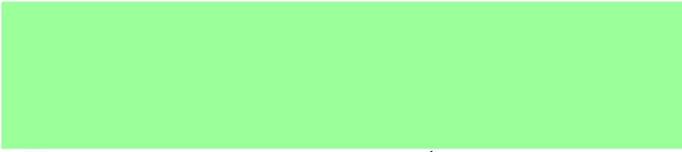
Office: VERMONT SERVICE CENTER

File: 

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:



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.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the AAO on appeal. The appeal will be sustained.

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 resided with her former husband and married him in good faith. 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.

* * *

(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:

(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.

* * *

(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 Peru who last entered the United States as a visitor on August 13, 2003. The petitioner married a U.S. citizen on December 11, 2003 in Florida and they were divorced on January 6, 2011. Prior to their divorce, the petitioner filed the instant Form I-360 on May 25, 2010. The director subsequently issued a request for additional evidence. The petitioner timely responded with further evidence which the director found insufficient to establish her eligibility. The director denied the petition for failure to establish the requisite joint residence and good-faith entry into the marriage.

Counsel timely appealed. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's grounds for denial for the following reasons.

Joint Residence

In her first affidavit, the petitioner stated that after their marriage in December 2003, she and her former husband moved in with her mother to keep her company after the petitioner's father's death and to help her mother with the mortgage payments on her house. In a notarized letter dated January 5, 2005, the petitioner's mother confirmed that since their wedding, the petitioner and her former husband had been living with her in her home and paying her monthly rent. The petitioner explained that around January 2006, her former husband lost his job and decided to move back to his mother's home so that he would not have to pay any residential expenses. The petitioner recounted that she remained living with her mother, but she and her former husband maintained their relationship and her former husband promised that he would find their own home when he got a stable job. The petitioner submitted numerous documents jointly addressed to her and her former

husband at the residence they shared with the petitioner's mother in [REDACTED] Florida. Those documents included monthly statements for three joint bank accounts, automobile insurance policy declarations, satellite television bills and copies of federal income tax returns marked as married filing jointly.

The director determined that the petitioner had not resided with her former husband because his Forms W-2, Wage and Tax Statements contained a different address than that of their claimed joint residence in Miramar, Florida and because the jointly-addressed documents were in "name only" and had "little evidentiary value." In her affidavit submitted on appeal, the petitioner explains that during the two years she and her former husband lived together at her mother's home, her former husband still had many of his documents mailed to his mother's home because he had lived there prior to their marriage and he felt it was safer to have important documents sent there. The petitioner recounts that she had no control over his personal decision about his mail. After her former husband lost his job, the petitioner states that he told her he decided to move back in with his mother because he was so financially unstable and could no longer help her mother with her mortgage payments and utilities bills. The petitioner also explains that during the two years she and her former husband lived with her mother, all the bills were in her mother's name and she consequently does not have any further documentation of their joint residence.

The preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with her former husband for approximately two years between 2003 and 2005. The affidavits of the petitioner and her mother provide a credible account of her and her former husband's joint residence. Their statements are supported by numerous jointly-addressed documents, the majority of which are monthly statements spanning from January 2004 through July 2005. The bank statements show regular and frequent transactions indicating that they were active accounts and not in "name only" as the director concluded. When viewed in the aggregate, the relevant evidence shows that the petitioner resided with her former husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In her first affidavit, the petitioner recounted in detail how she met her former husband through a friend in 2002. She described their courtship and how she became closer to her former husband when he comforted her after her father's death in July 2003. The petitioner recounted how the couple got married, lived as a family with her mother and she described several of their shared experiences such as trips she and her former husband took to New York and Las Vegas. The petitioner submitted airline itineraries and photographs of those trips as well as documentation of the former couple's joint bank, satellite television and automobile insurance accounts.

The director nonetheless determined the petitioner did not marry her former husband in good faith because the joint accounts appeared to be in "name only." Specifically, the director noted that the bank statements indicated that one account was used only by her former husband and the copies of the couple's joint income tax returns were not accompanied by any evidence that they were actually filed. On appeal, the petitioner submits federal income tax transcripts from the Internal Revenue Service

showing that she and her former husband jointly filed their tax returns in 2004, 2005 and 2006. In her first affidavit, the petitioner also explained that because her former husband frequently overdrew their bank accounts, she proposed that they keep separate accounts, although all of their bank accounts were jointly held. In her affidavit submitted on appeal, the petitioner reiterates that she married her former husband because of her feelings for him, especially the refuge and support she found in him after her father died. The petitioner credibly recounts how she remained committed to the marriage for six years until her former husband raped her. The preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner married her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). On appeal, the petitioner has met this burden. She has overcome the director's grounds for denial and demonstrated that she resided with her former husband during their marriage and that she married him in good faith. Because she has established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.