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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



U.S. Citizenship
and Immigration
Services

Date: **JUN 05 2013** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner resided with her abusive spouse, entered into her marriage in good faith and was subjected to battery or extreme cruelty by her husband during their marriage. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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.

* * *

(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)(B)(ii) of the Act are 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.

(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.

* * *

(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 Kenya who entered the United States on February 19, 2001 as a B-2 visitor. The petitioner married S-M-¹, a lawful permanent resident of the United States, on November [REDACTED] in [REDACTED], Alabama. The petitioner filed the instant Form I-360 on September 28, 2010. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of the petitioner's eligibility for immigrant classification based on her marriage to S-M-, the requisite battery or extreme cruelty, joint residence with S-M-, and entry into their marriage in good faith. 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 the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that she is a person of good moral character.² The appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the petitioner failed to establish that she jointly resided with her husband. On the Form I-360, the petitioner stated that she lived with S-M- from January of 2002 to January of 2009, first at [REDACTED] and then [REDACTED] in [REDACTED] Alabama. A review of the administrative record shows that S-M- filed two Form I-130 Immigrant Petitions for Alien Relative on behalf of the petitioner along with their corresponding Forms G-325A, Biographic Information. In both of the Forms G-325A submitted by the petitioner, dated December 9, 2001 and November 11, 2004, the petitioner stated that she began living with S-M- at the [REDACTED] address in February of 2001, the same month she entered the United States. The record also contains the following: the petitioner's affidavits; a Conditions of Release form dated September 15, 2002; an unsigned 2010 Alabama Individual Income Tax Declaration for Electronic Filing form; the petitioner's 2010 Wage and Tax statement; a statement from Alabama Power showing the petitioner's balance from December of 2010 to February of 2011; and an affidavit from the petitioner's friend, [REDACTED]. The Conditions of Release form is dated prior to the petitioner and S-M-'s marriage and does not establish that the two jointly resided together during their marriage. The 2010 tax document, W-2 form, and statement from Alabama Power are all dated after the petitioner claims that she separated from S-M- and are also not probative of a shared residence.

¹ Name withheld to protect the individual's identity.

² 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).

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's residence with an abusive spouse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." 8 C.F.R. § 204.2(c)(2)(iii). In her first affidavit, the petitioner stated that after she arrived to the United States in 2001, she first stayed with a friend at the same apartment complex where S-M- resided. She stated that she started dating S-M- after a few months and then moved in with him at his apartment a few months after that. The petitioner stated that they were married in November of 2004 and that S-M- became an alcoholic by the end of 2007 which lead to their ultimate separation in January of 2009. These dates provided by the petitioner are inconsistent with the information submitted to U.S. Citizenship and Immigration Services (USCIS) in support of the family petitions filed in her behalf where she stated she began residing with S-M- in February of 2001. Additionally, she did not describe their apartment, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with S-M- after their marriage. In her second affidavit, the petitioner again repeated her earlier statements adding that she started dating S-M- around July of 2001 and moved in with him around January of 2002 which again differ from her prior submission that she began residing with S-M- in February of 2001. She stated that they resided in a two bedroom apartment and that they shared one car. The petitioner claimed that in the fall of 2009 after S-M- sexually assaulted her, she left for a month and that when she returned to their shared apartment, S-M- had already moved out.³ The petitioner then stated that she was finished with S-M- for good around the "New Year of 2009" although this contradicts her earlier assertion in the same affidavit that her relationship ended with S-M- in the fall of 2009 after he sexually assaulted her. The petitioner did not further provide any other substantive information regarding their shared residence or explain the discrepancies surrounding the date she began living with S-M- and the date that they separated. The petitioner's friend, [REDACTED] stated that the petitioner lived with his mother from 2001 to January of 2002 when she began living with S-M-. He stated that the petitioner and S-M- lived at the [REDACTED] address for a year or two before moving to [REDACTED] where he visited them regularly. Mr. [REDACTED] did not describe any of the visits in probative detail or otherwise provide information about the petitioner's joint residence with S-M-.

On appeal, counsel asserts that the record contains "more than sufficient evidence commonly associated with couples cohabitating and residing together," but counsel fails to address the deficiencies of those documents. He incorrectly asserts that the release document from 2002 places the petitioner and S-M-, "husband and wife" in the same place at the same time but this incident took place prior to their marriage. The remaining documents are dated after the petitioner stated that she stopped residing with S-M- and the affidavits from the petitioner failed to provide consistent, detailed information regarding their joint residence or explain the internal deficiencies in her statements. Likewise, the affidavit from Mr. [REDACTED] failed to provide probative information about the petitioner's shared residence. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

³ The petitioner's second affidavit originally stated that the sexual assault occurred in October or November of 2008. Counsel subsequently submitted an affidavit stating that this was a typographical error and that the correct time period of the claimed sexual assault was October or November of 2009.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner failed to establish that she married S-M- in good faith. The record contains the petitioner's two self-affidavits, photographs of the petitioner and S-M- on an unidentified occasion together with a newspaper clip of their engagement, and an affidavit from the petitioner's friend [REDACTED]. The photographs and newspaper clipping show only that the two were pictured together on one occasion. The announcement of their engagement in the local newspaper alone is insufficient to establish that the petitioner married S-M- in good faith.

Regardless of the deficiencies of the record, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's affidavits and the affidavit from Mr. [REDACTED] did not provide sufficient detail to adequately address her good faith intent upon marrying S-M-. In her first affidavit, the petitioner stated that she met S-M- after she arrived in the United States, the two started dating, and then got married in November of 2004. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In her second affidavit, the petitioner stated that she began dating S-M- in July of 2001, and that their first date, dinner at the [REDACTED] was memorable. She stated that he gave her rides to places, taught her how to drive, and helped her adjust to life in the United States. She recounted that they moved in together in January of 2002 because she thought he was a good man and that after two years of living together, S-M- proposed at the [REDACTED]. She then stated that they were married on November 19, 2004 in a simple ceremony and did not go on a honeymoon for financial reasons. Apart from mentioning their favorite pastime of eating out at restaurants, the petitioner did not further describe their engagement, wedding, joint residence or any of their shared marital experiences, apart from the alleged abuse. The affidavit from Mr. [REDACTED] also did not contain probative information regarding the petitioner's intentions in marrying S-M-. He attested to knowing and visiting the petitioner and S-M- as a married couple, but he did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing his personal knowledge of the relationship.

On appeal, the petitioner submits a copy of the approved Form I-130 Immigrant Petition for Alien Relative filed by S-M- on her behalf. Counsel incorrectly argues that the approval of the Form I-130 Petition for Alien Relative filed by the petitioner's husband on her behalf establishes the petitioner's good-faith marriage. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. See *INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not standing alone prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). Although similar, the parties, statutory provisions and benefits procured through sections 203(a)(2)(A)(i) (Form I-130) and 204(a)(1)(B)(ii) (Form I-360) of the Act are not identical.

The petitioner's husband was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which he was required to establish his lawful permanent resident status and the validity of their marriage. Section 204(a)(1)(B)(ii) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also her own good-faith entry into their union. Section 204(a)(1)(B)(ii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(B)(ii) of the Act further explicate the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant record contains the petitioner's affidavits, a letter from counselor [REDACTED] with the [REDACTED] a letter from [REDACTED] with the [REDACTED] a domestic violence safety plan, a letter from [REDACTED] from [REDACTED] a Conditions of Release form, two intake forms for [REDACTED], a one-page psychiatric evaluation, and a medication log. The director correctly determined that the letters from [REDACTED], and [REDACTED] did not provide any additional evidence regarding the claimed abuse. The three sentence letter from Ms. [REDACTED] stated only that the petitioner was a client of her agency due to the domestic violence in her marriage. The letter from Ms. [REDACTED] stated that the petitioner called their hotline on August 10, 2011 to report that she was a victim of domestic abuse. Ms. [REDACTED] further stated that the petitioner participated in two crisis management sessions in August of 2011, was given two referrals, and scheduled for two 90-minute intake assessment appointments required for any person seeking [REDACTED] services. Ms. [REDACTED] stated that the petitioner did not participate in these assessment appointments and no further services were provided. The letter from Ms. [REDACTED] briefly stated that the petitioner appears to suffer from Posttraumatic Stress Disorder and Major Depressive Disorder but she did not state the basis for this determination. While we do not question Ms. [REDACTED], Ms. [REDACTED], or Ms. [REDACTED]'s professional expertise, their brief assessments of the abuse are based on their interviews of the petitioner, and they provided no further, substantive information regarding the claimed abuse. Likewise, the one page psychiatric evaluation is a summary of what the petitioner presented and does not add probative information regarding the claimed abuse. The medication log is evidence that the petitioner was prescribed an anti-depressant but it does not indicate that the anti-depressant was prescribed as a result of S-M-'s treatment of the petitioner. The Conditions of Release form, dated September 15, 2002 stated that S-M- was found to be a threat to the petitioner but this form is dated over two years before the petitioner and S-M- were married and is not evidence that S-M- subjected the petitioner to abuse during their marriage.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include... other forms of credible relevant evidence." 8 C.F.R.

§ 204.2(c)(2)(iv). In her first affidavit, the petitioner stated that S-M- became an alcoholic towards the end of 2007 and physically abused her on several occasions. She described one incident when he threw her out of the apartment and chased her to the parking lot where she jumped into their car. She stated that he hit her through the partially opened window before jumping into their other car and hitting the car she was in. The petitioner stated that the neighbors called the police and S-M- was arrested and released on bail but that there was no police record of this incident. During this time, the petitioner stated that she stayed with a friend for about a month before returning home to S-M- and that after her return, S-M-'s alcohol abuse escalated to drugs by the middle of 2008. She stated that he continued to be physically and verbally abusive and that they stopped living together for good by January of 2009. In her second affidavit, the petitioner recounted being slapped in the face by S-M- in 2002. Neighbors who witnessed the incident called the police and S-M- was arrested, resulting in the issuance of the Conditions of Release form. The petitioner stated that she forgave him and that there was not another incident of domestic violence until the end of the summer of 2009. She stated that S-M- had been a light drinker but began drinking heavily by mid-fall of 2009. She then stated that in October or November of 2009, S-M- sexually assaulted her and that this was the end of their relationship. The petitioner's two affidavits are inconsistent and no explanation was given to reconcile the discrepancies regarding how S-M- was abusive and when the alleged abuse occurred.

On appeal, counsel argues that the director erroneously determined that the petitioner's claim of sexual assault lacked credibility because she had not previously claimed that she had been sexually assaulted. While the director's determination that the assault was not credible because the petitioner failed to mention it her first affidavit was unnecessary, we find no error in his ultimate determination that the petitioner did not demonstrate that her husband's behavior constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's affidavits contained multiple discrepancies regarding the claimed abuse that were not explained below or on appeal and therefore carry less weight. When viewed in the aggregate, the remaining, relevant evidence in the record is insufficient to establish that S-M- battered the petitioner or that his behavior 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 her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Good Moral Character

Beyond the director's decision, the petitioner failed to establish her good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. See 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* The petitioner did not attest to her good moral character in either of her affidavits submitted below nor did she provide a state issued criminal background check from Alabama or New Jersey. The record is therefore insufficient to establish her good moral character. Accordingly, the petitioner has failed to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's determination that she did not establish her joint residence and entry into marriage with S-M- in good faith. Further, she failed to establish that S-M- subjected her to battery or extreme cruelty during their marriage and that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.