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]

Date: AUG 2 9 2014 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Self-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
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director ("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 under 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.

The director denied the petition for failure to establish that the petitioner resided with her spouse, a United States citizen, and that she entered into the marriage with him in good faith.

On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 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)(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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> (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.
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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.

Facts and Procedural History

The petitioner, a citizen of Kenya, indicates that she first entered the United States in or about December 2006 as a nonimmigrant student. On August 31, 2007, she married G-G-[1], a United States citizen. The petitioner last entered the United States on August 18, 2010 as a nonimmigrant student. She filed the instant Form I-360 self-petition on September 6, 2012. The director subsequently issued a Request for Evidence (RFE) of the requisite joint residence and good-faith entry into marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner appealed.

We review 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 on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

We find no error in the director's determination that the petitioner did not marry G-G- in good faith, and the evidence submitted on appeal fails to overcome this ground for denial. The petitioner submitted initially and in response to the RFE two personal affidavits, a friend's affidavit, photographs

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

and joint utility bills. In her initial affidavit, dated June 24, 2012, the petitioner recalled that she met G-G- in May 2007 while spending summer break from school in Texas. She recounted that they started dating and by the end of June 2007 moved in together, things seemed perfect, and on August 31, 2007 they married. The petitioner explained that her parents were against the marriage, and because she was unable to transfer credits from Oklahoma to a college in Texas she returned to school in Oklahoma, visited G-G- twice a month, and he tried to visit her. She stated that G-G- wanted her to quit school and when she refused, he began to verbally abuse her. In the petitioner's second affidavit, dated July 3, 2013, she did not address her intentions in marrying G-G-. The petitioner has not, in either affidavit, described in detail her courtship with G-G-, their wedding ceremony, joint residence, or any shared experiences apart from the abuse.

The remaining relevant evidence submitted below is insufficient to establish the petitioner's good-faith entry into the marriage. In her affidavit, stated that the petitioner was very excited about her marriage at first, but after a few months did not want to talk about it. Ms. primarily discussed the abuse and provided no probative information concerning the petitioner's marital intentions. The photographs show the petitioner and her spouse together on four unspecified occasions. The petitioner also submitted joint utility bills for an address in Texas for the months of July through December 2007. The billing statements show that the petitioner's name was added to G-G-'s utility accounts shortly before they married and remained during the marriage when both maintained their own apartments in different cities.

On appeal, counsel submits a letter brief and the petitioner's third personal affidavit. Counsel does not address on appeal the petitioner's requisite good-faith entry into marriage. In her affidavit, dated August 26, 2013, the petitioner states that she and G-G- fell in love like any other couple, got married, and everything initially was good, but that did not last for long. The petitioner does not describe on appeal her courtship with G-G-, their wedding ceremony, joint residence, or any shared experiences apart from the abuse. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with G-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The director also did not err in determining that the petitioner did not reside with G-G- during their marriage and counsel's claims and the evidence submitted on appeal do not overcome this ground for denial. The petitioner initially submitted a personal affidavit, a cousin's affidavit, joint utility bills and a joint 2011 federal tax return. In response to the RFE, the petitioner submitted a second personal affidavit and a letter from her 2011 tax preparer. In an addendum to the Form I-360, the petitioner stated that she resided with G-G- from June 2007 to December 2008 and from January 2012 to February 2012. In the petitioner's initial affidavit, she stated that after marrying, she returned to college in Oklahoma and periodically visited G-G- in Texas. In her second affidavit, the petitioner explained that she and G-G- never shared a residential lease because she was in school in Oklahoma where she maintained an apartment as the lessee, though they paid joint cable and electric bills for his apartment in Texas. While the petitioner may have intended to reside with G-G- after they married, 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 record does not establish that the petitioner resided with G-G- from August 31, 2007 when they were married to December 2008.

The relevant evidence also does not show that the petitioner resided with her spouse from January to February 2012 as she claimed on her Form I-360. The petitioner stated in her initial affidavit that she decided to move to Texas in mid-January 2012. She indicated that she had recently graduated from nursing school and G-G- had just been released from jail. The petitioner explained in her second affidavit that she does not have any more documents from her marriage because when she left G-G- in February 2012, she was running for her life. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. 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." See 8 C.F.R. § 204.2(c)(2)(iii). In her initial affidavit, the petitioner stated that in February 2012, she stayed with her cousin in Texas. In her affidavit, wrote that her cousin, the petitioner, resided with her nearly the entire month of February 2012, before moving into her own apartment on February 29. In her second affidavit, however, the petitioner stated that she and G-G- lived with his grandmother in Texas from mid-January until February 25, 2012 when she left him and moved in with her cousin. This is inconsistent with her own prior affidavit and statements by her cousin that the petitioner resided with Ms. nearly the entire month of February and then moved to her own apartment on February 29. This inconsistency has not been addressed or resolved on appeal. The record does not establish that the petitioner resided with G-G- from January to February 2012.

The petitioner initially submitted a joint 2011 federal income tax return and in response to the RFE, a letter from the tax preparer explaining that he met with the former couple in his office on February 18, 2012. On appeal, the petitioner states that G-G- was in jail from 2008 until late 2011 and demanded that they file their 2011 taxes jointly. She explains that she agreed to do so in February 2012 because she was afraid he would not otherwise leave her alone. As the petitioner has not claimed that she resided with G-G- at any time during 2011, the tax-related documents provide no probative evidence of their joint residence.

On appeal, counsel contends that the fact the petitioner and G-G- had internet, cable and utility bills together "certainly meets the preponderance of the evidence standard that it is more likely that they resided together than not." As discussed in the preceding section, the bills are from G-G-'s residence and are dated from July through December 2007. The petitioner stated she left G-G-'s residence to return to college in Oklahoma after their marriage in August 2007 and thereafter only returned for visits while she was in school. Consequently, the 2007 bills do not show that the petitioner resided with G-G- during their marriage.

On appeal, the petitioner claims that she did reside with G-G- and when she escaped to be safe, she was escaping from living with him. However, the record shows that at the times the petitioner describes escaping from G-G- she was not residing with him. Ms. stated that the petitioner called her in December 2007 after fleeing from her abusive husband and on her way back to Oklahoma. By the petitioner's own statements, she was attending college at that time in Oklahoma,

resided there in her own apartment and only visited in Texas G-G- periodically. Thus in December 2007 when she fled her spouse, the petitioner's "principal, actual dwelling place in fact, without regard to intent," was her apartment in Oklahoma, not a shared residence with her husband in Texas. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). As previously discussed, the record also does not show that the petitioner was residing with G-G- when she fled him in 2012. Although the petitioner claimed in her second affidavit that she returned to Texas to live with her husband from mid-January until February 25, 2012 when she fled him and went to stay with her cousin, the petitioner's cousin stated that the petitioner resided with her the entire month of February 2012. Even absent this contradiction regarding the petitioner's residence in February 2012, her brief statement is insufficient to establish that she resided with her spouse in January 2012. The preponderance of the relevant evidence does not demonstrate that the petitioner resided with her spouse during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. She has not demonstrated that she entered into the marriage with G-G- in good faith and resided with him. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.