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: OCT 0 3 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 Acting 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 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner resided with her spouse.

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

Applicable Law

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 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 this classification are explained further 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.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

Pertinent Facts and Procedural History

The petitioner was born in Peru and entered the United States on January 24, 1993, as a B-2 nonimmigrant visitor. She divorced her first husband, J-A-,[1] on March [redacted] The petitioner married her second husband, C-C-,[2] on June [redacted] She filed the instant Form I-360 self-petition on February 15, 2012. The director subsequently issued two Requests for Evidence (RFE). The first RFE requested evidence of the petitioner's good faith entry into the marriage with C-C-, and the petitioner timely responded. The second RFE requested evidence that the petitioner resided with her spouse and had good moral character. The petitioner responded with additional evidence. The director found that the petitioner had not established that she resided with C-C- and denied the petition. The petitioner filed a timely appeal.

We review 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, and we will dismiss the appeal for the following reason.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with C-C-, a U.S. citizen. On the Form I-360, the petitioner stated that she resided with C-C- from January 1998 until November 2010, and that their last joint address was an apartment on [redacted] The petitioner provided a personal affidavit that primarily focused on the alleged abuse. Regarding the claimed joint residence, the petitioner indicated that in 2002 prior to their marriage, when her son was two years old, C-C- "went to go live in [redacted], Florida" because his father had a job there for him. The petitioner claims that C-C- asked her to follow him to [redacted] but she declined so that her children could finish school. She stated that as "time went by and he never came and it was because he had another woman there." At some point thereafter, the petitioner and C-C- were married but other than noting that she and C-C- initially had to sleep on a mattress laid on the floor of their first apartment, the petitioner failed to list

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

or describe the shared marital residences. She also provided an Incident/Investigation Report dated February 22, 2009 showing an unidentified person reported a domestic disturbance involving the petitioner and C-C-; however, the report reflected that he lived in Florida and not at the claimed marital address on

In response to the first RFE of a good-faith marriage, the petitioner submitted a second affidavit in which she stated that after a three-month courtship they became a couple and moved in together two months after that. The petitioner did not indicate where they resided or provide any further information about their claimed shared residence. The petitioner provided additional statements from her children but they also failed to provide probative details regarding the claimed marital residence.

In her third affidavit, submitted in response to the director's second RFE, the petitioner asserted that she and C-C- began living together in 1998, and that in 2002 he "began to go to to work but . . . would come back every week to see us and when 15 days had passed that he hadn't been home, he would stay with us for a week, once in a while he would even stay as long as a month." She included an affidavit from her sister, who indicated that she lived with the petitioner and C-C- at their first address on for an unspecified period of time after coming to the United States on November 11, 2002. Ms. asserted that C-C- lived and slept at that address every weekend or sometimes longer, "depending on his job requirements located in " This contradicts the petitioner's claims that C-C- commuted every weekend from which is approximately 80 miles Northeast of Neither the petitioner nor Ms. described the apartments that the petitioner claimed to have shared with C-C-, or, for example, their shared belongings and residential routines, or otherwise provided any substantive information regarding the claimed marital residences.

The petitioner provided a bill dated May 14, 2013, for the apartment on but it listed only C-C-'s name. Moreover, because the petitioner indicated that she ceased to live with C-C- in 2010, this 2013 bill does not establish that she and C-C- shared a marital residence.

On appeal, the petitioner submits a fourth personal affidavit in which she asserts that although she and C-C- lived together at three different locations, she has no evidence of her joint residence with him because he "purposefully never put anything else in his name." The petitioner also addresses the 2009 Incident/Investigation report and claims that there are "facts missing from the report" and that "details were left out." The petitioner states that even though the report indicated that she and C-C- were "estranged," in actuality they were still together. The petitioner then claims that C-C- told the officer that his address was in because "[h]e was living more of the time [there] and that the officer "must have just assumed that we were actually separated." The petitioner does not proffer any details of the claimed marital residence. She provides new affidavits from her two daughters and a friend. While all three describe incidents of abuse, and indicate that the petitioner lived with C-C-, they do not describe any of the claimed marital residences or provide probative details that establish the petitioner shared a marital residence with C-C-.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "affidavits or any other type of relevant credible evidence of residency may be submitted." 8 C.F.R. § 204.2(c)(2)(i). In this case, the affidavits of the petitioner, her children, her sister, and her friend lack any substantive description of the petitioner's residence with C-C- at any of the claimed residences. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with C-C-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she resided with C-C-. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.