

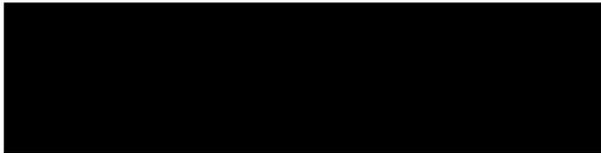
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B9

Date: JUL 11 2011

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:

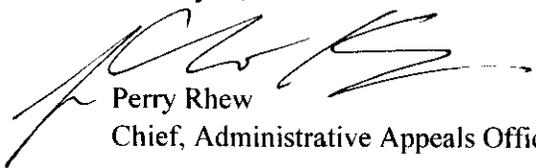
SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew  
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)(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 husband and entered into marriage with her husband in good faith.

On appeal, the petitioner submits a statement 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:

*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.

\* \* \*

(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 Jamaica who entered the United States on September 4, 1995. The petitioner married a U.S. citizen on April 28, 2009 in Newark, New Jersey. On June 10, 2010, the petitioner's husband filed a petition for alien relative (Form I-130) on her behalf. The Form I-130 petition was approved on November 16, 2010. The petitioner filed the instant Form I-360 on August 9, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's residence with her husband, the petitioner's good-faith entry into the marriage and her husband's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to establish that the petitioner resided with her husband and entered into the marriage in good faith. The petitioner filed a timely appeal.

On appeal, the petitioner submits a two-page statement, utility bills, cable bills and bank statements.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims and the evidence submitted on appeal do not

overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In the petitioner's first statement, dated October 30, 2010, she spoke predominately of the alleged abuse and provided no probative information regarding her good faith in entering the relationship. On appeal, she asserted that she entered into the marriage in good faith and her husband's grandmother was very supportive of her son. The petitioner noted, "my husband and son formed a bond, I had never seen my son so happy . . . I was happy, my son was happy and [S-T-]<sup>1</sup> was happy, in the beginning." The petitioner's son, ██████████ asserted in a statement, dated October 28, 2010, that, "[S-T-] is a great stepfather to me. He always talks to me about life and school and encourages me to stay out of trouble, to stay away from drugs and bad company." The petitioner's son noted, "I can remember a lot of times when we all would go out for dinner, movies or just to the park or even church and we all would have a good time. I really enjoyed those times." The statements from the petitioner and her son did not further describe how the petitioner met her husband, their courtship, wedding, joint residence or other shared experiences, apart from the abuse.

The petitioner submitted letters from three friends who briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. ██████████ stated that she has "been around ██████████ and her husband . . . on several occasions." ██████████ noted, "I was suppose to attend the wedding but was not able to." ██████████ does not further discuss her interactions with the petitioner and her husband during their relationship as a married couple, apart from the abuse. ██████████ stated that the petitioner and her husband came to stay with her for a few days during the Christmas holidays in 2009, but she did not further discuss their visit, apart from the abuse. ██████████ stated that he knew the petitioner was dating S-T-, "who seemed like a very nice person." ██████████ noted, "I was happy for her when they got married; I was invited to the wedding but could not attend." ██████████ however, did not discuss his interactions with the petitioner and her husband during their courtship. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her husband in good faith.

The petitioner submitted with the Form I-360 a 2009 Income Tax Return (Form 1040EZ) dated June 10, 2010. The self-prepared income tax return is unsigned with a "Do Not File" notation imprinted across the form. The director correctly noted that the return indicates a jointly filed status; however, there is no indication that the return was filed. On appeal, the petitioner asserted that she and her husband filed their 2009 tax return jointly, but learned from the Internal Revenue Service that their "refund was rejected" because her "Social Security number did not match [her] date of birth." However, the petitioner has not submitted any documentation to confirm the rejection of her jointly filed tax return. The record also contains: three utility statements; three banks statements; two cable statements issued in the petitioner's husband's name only; and undated photographs of the petitioner and her spouse, two of which appear to be of their wedding, and the remaining were taken at two unidentified locations.

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<sup>1</sup> The petitioner's husband's name will be referred to as S-T- to protect his identity.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents show that the petitioner and her husband jointly held a bank account for three months, they were jointly responsible for the payment of one utility bill for three months, and they were photographed together during their wedding ceremony and on two, unspecified occasions. The documents also reflect that in November 2009 the petitioner added her husband as a beneficiary on her life insurance. However, the petitioner has not offered any testimony regarding her courtship, wedding ceremony, shared residence and experiences with her husband. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage, or otherwise establish that they have personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(T)(aa) of the Act.

#### *Joint Residence*

On the Form I-360, the petitioner stated that she has resided with her husband since July 2008, and their last joint address is an apartment [REDACTED]. In their statements, the petitioner and her son do not describe their home or shared residential routines with the petitioner's husband in any detail, apart from the abuse. The petitioner's friends do not describe any visits to the petitioner's marital residence and the submitted photographs are not identified as having been taken at any specific residence that the petitioner shared with her husband.

The director accurately assessed the relevant documents submitted below. The petitioner initially submitted a residential lease for her and her husband that was allegedly signed by them on September 15, 2009. The director noted in the RFE that it does not appear that the petitioner's husband signed the lease as the signature on the lease does not match the signature on his identification card. In response to the RFE, the petitioner submitted a new copy of the residential lease, which also has a September 15, 2009 signature date, but her husband's signature on the lease is different from that submitted with the initial filing. The director questioned the validity of the documents because the petitioner provided no explanation regarding the changed signature. On appeal, the petitioner asserts that when they moved to the apartment, she had verbal consent from her husband to sign the lease on his behalf. The petitioner, however, has not explained the discrepancy between the two copies of the lease and this unresolved discrepancy detracts from the credibility of her claim of joint residence with her husband.

The petitioner also submitted a copy of her husband's life insurance policy, which reflects his residential address as [REDACTED] and provided a copy of the application for this policy. The director noted in the RFE that the insurance policy application shows that the petitioner is the owner, beneficiary and payer of the policy. The director determined that little evidentiary value is placed on this evidence because there is no indication that the petitioner's husband had any part in obtaining the policy. The director reiterated this finding in the denial notice. The petitioner, however, failed to address this issue in rebuttal to the RFE or on the instant appeal. Accordingly, the residential address listed on her husband's life insurance policy is of little probative value in establishing their joint residence.

Although the aforementioned utility statements, banks statements, cable statements, and life insurance statement reflect that they were mailed to the purported marital home, the preponderance of all the relevant evidence fails to establish that the petitioner resided with her husband. The petitioner and her son do not describe their shared residence with the petitioner's husband in any detail, apart from the abuse. The petitioner's friends do not describe any visits to the petitioner's marital residence and the submitted photographs are not identified as having been taken at any specific residence that the petitioner shared with her husband. Moreover, the unresolved discrepancy between the copies of the residential lease diminishes the credibility of the petitioner's claim that she resided with her husband. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Conclusion*

On appeal, the petitioner has failed to overcome the director's determinations that she did not enter into the marriage in good faith and reside with her husband. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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.

**ORDER:** The appeal is dismissed.