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

B9

Date: DEC 2 0 2012

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 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,

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)(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 United States citizen spouse.

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 director also denied the petition for failure to establish that her husband subjected her to battery or extreme cruelty during their marriage. On appeal, the petitioner submits 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.
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> (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.
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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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> (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.
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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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who entered the United States on October 19, 2009, as a visitor. The petitioner married L-M-[1], a U.S. citizen, on April 15, 2010 in Jersey City, New Jersey. The petitioner filed the instant Form I-360 on July 12, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's joint residency with L-M-, evidence of abuse, and good-faith entry into the marriage. 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 counsel 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. The appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the record failed to demonstrate that the petitioner resided with L-M-. The petitioner stated on her Form I-360 that she resided with L-M- from April of 2010 to December of 2010 in Jersey City, New Jersey. The relevant evidence of record below was the petitioner's affidavit.

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 affidavit, the petitioner did not describe her shared residence with L-M- in any probative detail. The petitioner stated that she met L-M- at a friend's party, they began dating, and got married. She stated that she moved in with L-M- two weeks after they were married. The petitioner stated that they rented a room in L-M-'s friend's house and that the room was very small. She did not describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with L-M- after their marriage.

On appeal, the petitioner submits another affidavit, a Chase bank statement, letters from [redacted] and [redacted], wedding photographs and photographs of two unidentified occasions. In her affidavit, the petitioner states that the lease of the apartment where she resided with L-M- was in his friend's name. She further states that they did not have any utilities in their name. She does not further describe their home, shared belongings and residential routines or provide any other substantive information sufficient to demonstrate that she resided with [redacted] after their marriage. The Chase bank statement is addressed to the petitioner at a different address from the claimed shared residence with [redacted] [redacted] states that he visited the petitioner at her marital home but does not describe it other than to say that the petitioner and [redacted] rented room was very small. [redacted] states that he attends the same church as the petitioner but does not attest to the petitioner's shared residence with L-M-. Additionally the photographs capture one moment in time and are not indicative of a shared

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

residence. 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.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that she married L-M- in good faith. The record contains the petitioner's affidavit and letters from three friends In her first affidavit, the petitioner stated that she met L-M- at a party and that they exchanged telephone numbers. She stated that they went out on dates and agreed that they would wait until after marriage to become intimate with each other. She then stated that they were married in the presence of family members and friends. She did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. all briefly attested to being present at the wedding ceremony but do not speak to the petitioner's intentions upon marrying L-M-.

On appeal, the petitioner submits another affidavit, photographs of the wedding and of two unidentified occasions, and letters from In her affidavit, the petitioner speaks predominantly of the claimed abuse and does not further describe her courtship with L-M-, wedding ceremony, shared residence or experiences apart from the abuse. states that he knows the petitioner and L-M- as a couple and visited them at their shared residence. He does not speak to the petitioner's intentions upon marrying L-M-. Mr. states that he attends the same church as the petitioner and that she told him about her abusive relationship with L-M-. He also did not speak to the petitioner's marital intentions. The photographs alone are insufficient to establish that the petitioner married L-M- in good faith.

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 do not provide sufficient detail to adequately address her good-faith intent upon marrying L-M-. 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)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We further find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. The relevant record contains the petitioner's affidavit and a psychological evaluation prepared by , a New York State licensed psychotherapist. In her affidavit, the petitioner stated that the problems with L-M- began because she wanted to move to a larger apartment and he did not. She stated that L-M- seemed "unwilling" to discuss their problems and she became depressed. She stated that he became aggressive and insulting towards her and she became afraid of him. The petitioner further recounted that since she left him, she has had little contact with

L-M- and that she feels "stranded" by him. The petitioner did not provide further probative details of specific incidents of abuse. Additionally, the psychological evaluation letter from LCAT does not provide any additional evidence regarding the claimed abuse. indicated that L-M-'s urge to gain full possession over the petitioner led to the decline of the petitioner's psychological well-being. However, she does not state the basis for this determination and the evaluation does not provide any probative details regarding any abuse or extreme cruelty inflicted by L-M- upon the petitioner. While we do not question professional expertise, her assessment of the abuse is based on her interview of the petitioner, and it provides no further, substantive information regarding the claimed abuse.

On appeal, the petitioner submits a second affidavit and letters from two friends. The petitioner describes being physically assaulted by L-M- but she does not provide probative details regarding specific instances of abuse. She describes one example of being physically abused while waiting outside for L-M- to get home because he had changed the locks on the apartment. She states that she was with a family friend who ended up fighting with L-M-. She does not identify who the friend was and provides no further probative details regarding this incident. describes waiting with the petitioner outside her home after the locks had been changed by L-M-. He states that the petitioner was "molested" but does not give further probative details regarding the incident. asserts that L-M- is violent but does not describe any particular incident in detail. The petitioner's evidence is insufficient to demonstrate that any specific behaviors of the petitioner's husband constituted battery or extreme cruelty. When viewed in the aggregate, the remaining, relevant evidence in the record is insufficient to establish that L-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)(A)(iii)(I)(bb) 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). 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.