

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

[REDACTED]

B9

Date: **OCT 22 2012**

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: 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:

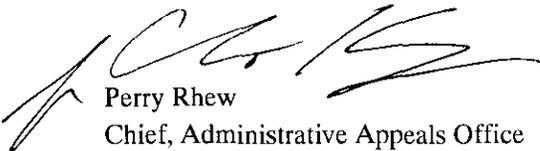
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,

  
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 former husband and entered into the marriage in good faith. The director also denied the petition on the basis of his determination that the petitioner had failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage and that she had a qualifying relationship because she did not show that their divorce was connected to his abuse.

On appeal, counsel reasserts the petitioner’s eligibility in a short statement on the Form I-290B, Notice of Appeal and 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

(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)(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.

(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 the Dominican Republic who entered the United States on March 11, 2004, as a B-1 visitor. The petitioner married J-R-<sup>1</sup> a U.S. citizen, on April 21, 2005 in San Juan, Puerto Rico. The two were divorced on May 8, 2008. The petitioner's former husband filed an alien relative immigrant petition (Form I-130) on the petitioner's behalf, which was denied on September 6, 2006 along with the petitioner's concurrently filed application for adjustment of status. The petitioner filed the instant Form I-360 on July 30, 2008. The director subsequently issued two Requests for Evidence (RFE) of, *inter alia*, the petitioner's 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.

On appeal, counsel asserts that the director did not give proper weight to the evidence submitted. Counsel submits additional evidence.

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, we find no error in the director's ultimate determinations. Counsel's claims on appeal fail to overcome the grounds for denial.

### *Joint Residence*

The petitioner failed to establish that she resided with J-R- during their marriage. The petitioner did not state the amount of time that she resided with J-R- on the Form I-360 nor the last date that they lived together. In her first affidavit dated November 17, 2007, the petitioner stated that J-R- left their home sometime after their Form I-130 interview with the U.S. Citizenship and Immigration Services (USCIS), held on September 6, 2006. In her second affidavit dated August 26, 2009, the petitioner does not reference the dates she resided with J-R-<sup>2</sup>. The petitioner filed for divorce on August 21, 2007 which was finalized May 8, 2008.

The petitioner submitted copies of what appear to be envelopes addressed to J-R- at their Calle America, San Juan, Puerto Rico address. She also submitted copies of magazine covers addressed to

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<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> A review of the administrative record shows that in a previously filed Form I-360, the petitioner listed her dates of residence with J-R- as October 2004 to January 2007.

J-R-, a cellular telephone bill addressed to J-R-, a Rent-A-Center contract addressed to J-R-, a 2005 joint local tax document, four envelopes addressed to the petitioner and J-R-, various receipts including a money transfer dated August 1, 2007, a declaration from her [REDACTED] and a declaration from her [REDACTED]. The petitioner also submitted photographs of their wedding and three unidentified occasions.

The documents submitted to establish residency are mainly envelopes or statements addressed to J-R-. This is evidence that he received mail at the stated shared address with the petitioner but not that he resided with her. Additionally the photographs capture one moment in time and are not indicative of a shared residence. The rent receipts are general and do not specify what address the rent is for. Further, the money transfer is dated the month that J-R- allegedly left and carries little evidentiary weight to show joint residence. The 2005 Puerto Rico tax document alone is not sufficient evidence to demonstrate that the petitioner and J-R- resided together at some point during their marriage. In response to the RFE, the petitioner also submitted, a second personal affidavit, additional mail addressed to the petitioner and J-R- at their shared address, letters addressed to J-R-, and statements from five friends.

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." 8 C.F.R. § 204.2(c)(2)(iii). *De novo* review of all of the relevant evidence submitted below does not establish that the petitioner jointly resided with her husband. Neither of the petitioner's affidavits submitted below describe the petitioner's residence with J-R- in any probative detail. She does not, for example, describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with J-R- after their marriage. Likewise, the initial declarations submitted with the Form I-360 from [REDACTED] and [REDACTED] are insufficient to establish that the petitioner shared a residence with J-R-. [REDACTED] stated that she is the owner of the house that the petitioner rented with J-R- but does not describe the marital residence or provide additional details apart from the abuse. [REDACTED] stated that he is a neighbor and spent a lot of time with the petitioner and J-R-. However, he does not describe any specific visit in detail or provide any additional details of the petitioner's residence with J-R-. In response to the RFE, the petitioner also submitted statements from [REDACTED] and a second statement from [REDACTED] stated only that she knew both the petitioner and J-R- as a married couple but did not state the basis of their acquaintance or provide any additional details regarding the marital residence. [REDACTED] stated that she knew them as a couple "for love" and now separately. She does not provide any substantive details regarding the marital residence or describe any specific visits. [REDACTED] and [REDACTED] all stated that they were neighbors of the petitioner and J-R- but do not give any details about the marital residence apart from the alleged abuse. On appeal, the petitioner submits a third affidavit that largely repeats her earlier statements and does not provide additional, probative details of her residence with J-R- during their marriage.

In her affidavits, the petitioner does not specify the dates or address of her residence with her former husband and she does not describe their home(s) or shared residential routines in any detail, apart from

the alleged abuse. The brief statements of the petitioner's friends and neighbors provide no substantive information to establish that the petitioner and J-R- resided together after their marriage. The petitioner's testimony and the testimony submitted on her behalf are insufficient to establish by a preponderance of the evidence that the petitioner resided with her former husband during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*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 affidavit, she stated that she met J-R- at a mutual friend's party. She stated that they began dating and that after seven or eight months, they decided to get married. She recounted that they spent time with friends, ate out at restaurants, and did all of their errands together. The petitioner further stated that J-R- submitted the Form I-130 on her behalf because he wanted to travel to the Dominican Republic with her to meet her children. The petitioner then stated that after he submitted the paperwork, his attitude towards her began to change. The director noted upon review of the administrative record that the petitioner submitted a sworn statement at the Form I-130 interview in which she admitted to marrying J-R- to obtain an immigration benefit. The director issued an RFE with this information and requested that the petitioner provide additional proof of her good faith entry into marriage with J-R-. The petitioner submitted a second affidavit where she mainly explained that she was coerced into signing the sworn statement but did not provide additional details as to her intent upon marrying J-R-. She did not further describe how she met her former husband, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

In response to the RFE, the petitioner also submitted statements from her landlady and four friends who briefly discussed the petitioner's marriage. The letters spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. The statement from [REDACTED] does not speak to the petitioner's intentions upon marrying J-R-. [REDACTED] stated that the petitioner's relationship with J-R- was very good at the beginning but then deteriorated quickly when J-R- became verbally abusive. [REDACTED] stated that the petitioner and J-R- seemed very happy and compatible at first but then it seemed that J-R- began to feel embarrassed that his wife is older than him. [REDACTED] stated that she is a witness of the love that the petitioner had for J-R- and that their marriage was in good faith. She further stated that things changed when J-R- began finding the petitioner old and told her that he was ashamed of her. [REDACTED] stated he spent a lot of time with the petitioner and J-R- and witnessed J-R-'s mistreatment of her. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married J-R- in good faith.

The director also accurately assessed the other relevant documents submitted below. The record contains an approval notice for the Form I-130 petition filed on the petitioner's behalf by J-R-, a 2005 income tax document, photographs of the petitioner and J-R-'s wedding ceremony and three unidentified occasions, and a copy of a psychological evaluation for J-R-. The record also contains a life insurance policy taken out by J-R- and listing the petitioner as a secondary beneficiary. The policy became effective January 2, 2007, shortly before the petitioner stated that she and her former husband separated. The Form I-130 approval notice is dated April 21, 2008, more than a year after the petitioner

and J-R- separated and does not speak to the petitioner's good faith intent upon marrying J-R-. The insurance policy was issued shortly before the petitioner and J-R- separated and also does not indicate her good faith intention in entering the marriage. The tax document bears no indication that it was actually filed and the photographs are also insufficient to establish the petitioner's intentions upon marrying J-R-.

On appeal, the petitioner submits a third statement and counsel briefly asserts that the director "failed to give proper weight to the numerous pieces of evidence of bonafide [sic] marriage." Counsel does not specifically identify any error in the director's determination that the petitioner did not enter her marriage in good faith. Further, the petitioner's affidavits briefly state how she met J-R-, began dating him, and then got married to him but does not describe their courtship, wedding, joint residence or any of their other shared experiences, apart from the alleged abuse. The petitioner asserts in her affidavit submitted on appeal that the lack of documentation showing a comingling of finances was due to J-R-'s bad credit and reiterates that she was coerced into signing the sworn statement where she admitted to marrying J-R- for immigration purposes. However, even if the sworn statement were coerced, the remaining relevant evidence in the record is insufficient to establish the petitioner's intent upon marrying J-R-. 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." 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 J-R-. Likewise none of the petitioner's friends discussed in probative detail their observations of the petitioner's interactions with or feelings for J-R- during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with J-R- 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 former 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 affidavits, statements from her landlady and four friends, and a psychological evaluation of J-R- from [REDACTED]

In her first affidavit, the petitioner stated that J-R- was controlling and unfaithful. She stated that he called her names and would force her to go to work with him because of his possessiveness. She further stated that he had mental health issues and this interfered with the first family petition he filed on her behalf. She explained that during the Form I-130 interview, J-R- was very nervous and was pressured by the immigration officer into admitting that the marriage was fraudulent. The petitioner stated that J-R- felt guilty and filed a new petition afterwards that was subsequently approved. The petitioner concluded that when J-R- left her, she became depressed because her suspicions of J-R-'s infidelity were confirmed. In her second affidavit, the petitioner further described the Form I-130 interview and reiterated that she married J-R- in good faith.

The petitioner's friends attested to her troubled marriage, but their statements are all similar and also fail to demonstrate that the petitioner's former husband subjected her to battery or extreme cruelty. The petitioner's landlady, ██████████ stated that she knew that the petitioner and J-R- had marital difficulties and that J-R- seemed embarrassed that the petitioner was older than him. She stated that on one occasion, she heard J-R- yell at the petitioner for not having dinner ready when he arrived at home. ██████████ stated that he observed the petitioner being afraid of J-R- and that on one occasion J-R- reproached her strongly for forgetting something. ██████████ further stated that he overheard loud voices from the petitioner and J-R-'s house and thought about calling the police but did not. ██████████ stated that the petitioner and J-R-'s relationship deteriorated because of J-R-'s mistreatment of the petitioner. ██████████ stated that J-R- began to publicly humiliate the petitioner because of her age. ██████████ stated that J-R- became embarrassed of the petitioner's age and was abusive towards her. ██████████, and ██████████ did not give probative details describing specific incidents of abuse.

The director concluded that the psychological evaluation of J-R- was evidence that he was being treated for depression but was not sufficient evidence to show that the petitioner was subjected to battery or extreme cruelty by him. The director also examined the administrative record and took into account the petitioner's psychological evaluation from ██████████ that had been submitted with the petitioner's prior Form I-360. The director correctly determined that the report submitted by ██████████ was insufficient to prove the alleged abuse. He stated that the petitioner had been treated by his office for five months with anti-depressant medication and attributed her depression and post-traumatic stress to her detention by immigration authorities and the deterioration of her marriage to J-R-. While we do not question the professional expertise of ██████████ his assessment is very brief and does not provide any further, substantive information to demonstrate that J-R-'s alleged actions constituted battery or extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). The affidavit that the petitioner submits on appeal contains very little details about the claimed abuse. The petitioner states only that she sought counseling with her husband but that he left the treatment. She then states that she explained everything regarding J-R-'s mistreatment of her to the doctor. Probative details of abuse are missing in both the ██████████ evaluation as well as the petitioner's statements. Accordingly, the petitioner has not established that her former 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.

#### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) 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

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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.