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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

Date: APR 03 2013

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)

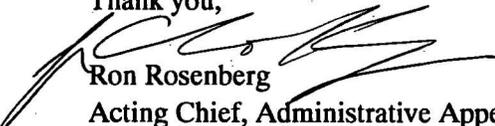
ON BEHALF OF PETITIONER:  
[REDACTED]

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,

  
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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith.

On appeal, 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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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(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 Brazil who was paroled into the United States on March 17, 2009. The petitioner married J-D-<sup>1</sup>, a U.S. citizen, in Viera, Florida on [REDACTED]. The petitioner filed the instant Form I-360 on February 14, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into marriage with her husband in good faith. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to demonstrate 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 ground 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. The record contains the petitioner's declarations, photographs of the wedding and of various other occasions, and joint banks statements. In the petitioner's affidavit, she stated that she first met J-D- when she was 21 years old and that he was her first love. She stated that he was sweet and loving, she moved in with him after they became engaged and they had a beautiful yet simple wedding that was attended by their loved ones. The petitioner did not further describe how she met her husband, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse. The director correctly concluded that the bank statements and photographs were insufficient to establish the petitioner's good-faith intent upon marrying J-D-.

In response to the RFE, the petitioner submitted a brief statement in which she recounted that getting married was a dream come true for her and J-D-. She explained the lack of evidence documenting her marriage to J-D- but did not further describe their courtship, engagement, wedding, joint residence or shared marital experiences.

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

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

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 declarations do not provide probative information regarding her intentions in marrying J-D-. While the petitioner explained her lack of additional joint documentation in her second affidavit, she failed to provide sufficient testimony regarding her intentions upon marrying J-D-. The petitioner has not discussed in probative detail her courtship, engagement, wedding, shared residence and other marital experiences, apart from the abuse. *See id.* (providing that testimony regarding these factors may be submitted in the absence of other documentation).

On appeal, the petitioner submits a copy of the approval notice of the Form I-130 Immigrant Petition for Alien Relative filed by J-D- on her behalf and resubmits photographs of the two of them. Counsel incorrectly argues that the approval of the Form I-130 Petition for Alien Relative filed by the petitioner’s husband on her behalf establishes the petitioner’s good-faith marriage. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, “the approved petition might not standing alone prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws.”). Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner’s husband was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which he was required to establish his citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also her own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explicate the statutory requirement of the self-petitioner’s good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). 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.

### *Conclusion*

On appeal, the petitioner has not overcome the director’s ground for denial and 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.