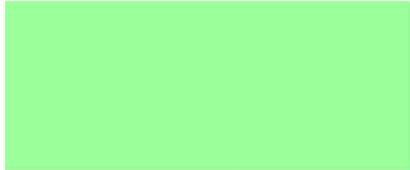


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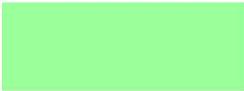
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

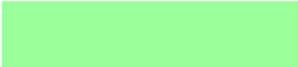


U.S. Citizenship
and Immigration
Services



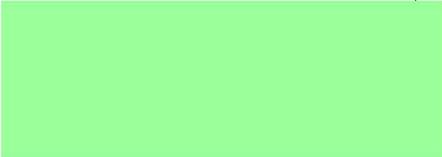
Date: **APR 29 2013**

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:

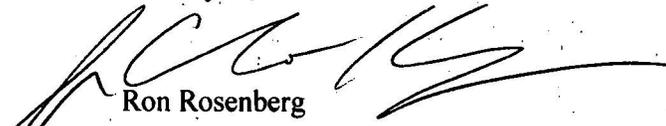


INSTRUCTIONS:

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 has a qualifying relationship as the spouse of a U.S. citizen; she is eligible for immediate relative classification based on such a relationship; she entered into marriage with her husband in good faith; she jointly resided with her husband; her husband subjected her to battery or extreme cruelty during their marriage; and she is a person of good moral character.

On appeal, counsel submits a brief and previously filed 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.

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 last entered the United States on September 24, 2007 with advance parole. The petitioner married a U.S. citizen on November 15, 1996 in Florida. The petitioner filed the instant Form I-360 on November 22, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and her residence with her husband. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director subsequently issued a Notice of Intent to Deny (NOID) finding that the inconsistencies in the petitioner's evidence rendered her ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Counsel responded to the NOID in a timely manner, but the director determined that the response to the NOID did not resolve the inconsistencies in the record. The director denied the petition and counsel filed a timely appeal.

The director determined that the petitioner did not establish her eligibility under any of the provisions of section 204(a)(1)(A)(iii) of the Act. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Qualifying Relationship and Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that a self-petitioner must submit evidence of the marital relationship, including a marriage certificate issued by civil authorities, and evidence of the

U.S. citizenship or lawful permanent resident status of the abusive spouse. Here, the petitioner has submitted certified copies of her spouse's Florida birth certificate and their Florida marriage certificate. The marriage certificate reflects that they were wed on November 15, 1990 in [REDACTED]. Therefore, the petitioner has established that she has a qualifying relationship as the spouse of a U.S. citizen and she is eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act. The director's contrary determination is withdrawn.

Joint Residence

On the Form I-360, the petitioner stated that she lived with her husband from November 1996 until August 2010 and that their last joint address was an apartment on [REDACTED] Florida. As evidence of her joint residence, the petitioner initially submitted an affidavit, a letter from her spouse, two residential leases, tax returns, bank statements, her and her spouse's driver's licenses, a credit card bill, a utility bill, a sales receipt, copies of photographs of her and her husband, letters from her friends, and various pieces of mail.

In the petitioner's initial affidavit, she stated that after her marriage she moved with her husband into his mother's home in [REDACTED] Florida. She recounted that they resided there for nine months and once she received a full-time job in [REDACTED] she rented a room near her place of employment. The petitioner stated that after her mother-in-law's death in May 2007, she moved with her husband to an apartment at [REDACTED]. The petitioner also submitted, with the initial filing of the Form I-360, a letter from her spouse, in which he briefly in a one-sentence statement attested to residing with the petitioner.

In the RFE, the director found the petitioner's testimony to be inconsistent with the information provided in a Form G-325A, Biographic Information Sheet, she previously submitted with an adjustment of status application (Form I-485). On the biographic information sheet, dated October 15, 2009, the petitioner listed her residence from July 1996 until June 2003 as [REDACTED] and from June 2003 until "present" as [REDACTED]. The director also found the petitioner's testimony to be inconsistent with the submitted residential lease, which was issued for her and her husband's residence at [REDACTED] for the period of June 2001 through June 2004. The director further found inconsistencies in the residential addresses listed on several of the submitted bank statements, which were addressed to the petitioner and her spouse at [REDACTED] from December 2001 through June 2002 and [REDACTED] from September 2002 through December 2009. The director noted that the petitioner's tax returns also contain inconsistent residential address information. The tax returns from 2005, 2004 and 2003 show the petitioner's address as [REDACTED] and the returns from 2002 and 2001 show her residential address as [REDACTED]. With the exception of the 2005 tax return, the petitioner filed all of the tax returns as married filing jointly.

In response to the RFE, the petitioner asserted that she resided at [REDACTED] from July 1996 through June 2003 and moved to [REDACTED] from June 2003 through October 2009. She stated that her husband resided with her and he also resided with his mother in [REDACTED] Florida to help take care of his mother because she was ill at the time. The petitioner contends that after her mother-in-law's

death she and her husband shared a home on a permanent basis at [REDACTED]. The petitioner, however, in the same statement also asserted that she has resided at [REDACTED] since September 2002 until the present time. The petitioner noted that [REDACTED] and [REDACTED] are located on the same property. She stated that she resided at [REDACTED] and on occasion her mail was picked up by her neighbor who resides at [REDACTED]. The petitioner, however, had previously submitted a residential lease issued for her and her husband's joint residence at [REDACTED] for the period of June 2001 through June 2004.

The petitioner also submitted as additional relevant evidence: original versions of five of her previously submitted photographs with handwritten labels indicating that the photograph were taken at her joint residence with her spouse; her spouse's social security statement for 2009 addressed to [REDACTED] her jointly filed tax return for 2007 and 2008 showing their residential address as [REDACTED] an envelope date stamped in 2004 addressed to both the petitioner and her husband at [REDACTED] various pieces of mail addressed to the petitioner at [REDACTED] after the date she claims she separated from her husband; a home insurance policy issued to her landlords, [REDACTED] for [REDACTED] a letter from [REDACTED] and a picture of a home with description of the home from [REDACTED]. In her letter, Ms. [REDACTED] stated that the petitioner has resided at [REDACTED] since June 2001. Ms. [REDACTED] further stated that the petitioner's husband resided with her at that address from June 2001 until June 2010. The petitioner, however, in her statement asserted that she has only resided at [REDACTED] and another individual resided at [REDACTED].

In the NOID, the director further determined that the petitioner's statements are inconsistent with copies of the driver's licenses she previously submitted for herself and her husband. The driver's licenses respectively show the petitioner's address on the date of issue, May 25, 2008, as [REDACTED], and her husband's address on the date of issue, December 17, 2009, as [REDACTED] indicating that they resided at separate addresses. The director also determined that the record contains tax documents the petitioner submitted with a previous adjustment application that are inconsistent with the petitioner's testimony. The record contains copies of the petitioner's 1997 through 2003 W-2 forms (Wage and Tax Statements), which list her address as [REDACTED]. The record also contains the petitioner's husband's 2006 tax return, which the petitioner submitted with a previous adjustment of status application. The petitioner's husband filed the 2006 tax return as "single" and listed his residence as [REDACTED].

In response to the NOID, counsel asserted, in a statement, dated January 10, 2011, that the petitioner's testimony of the dates of her residence were only "an approximation." She stated that the petitioner resided at [REDACTED] from July 1996 until June 2001 and [REDACTED] from June 2001 until present. She further stated that the petitioner's husband resided in [REDACTED] Florida from November 1996 until June 2001, [REDACTED] from June 2001 until December 2009, an apartment in [REDACTED] Florida from December 2009 until June 2010, and in [REDACTED], Florida from June 2010 until present. Counsel asserted that the petitioner resided at [REDACTED], which is divided into two subunits, and the petitioner's neighbor would sometimes retrieve her mail. She noted that some of the documents contain the petitioner's landlord's address at [REDACTED] because the petitioner was not always comfortable with having her mail delivered to the shared mailbox at [REDACTED].

Counsel submitted a letter from the petitioner's husband dated January 10, 2012, in which he stated that after he married the petitioner he resided on [REDACTED] to care for his mother who was ill while the petitioner resided at [REDACTED]. He stated that in June 2001 he and the petitioner resided together at [REDACTED] during which time he visited his mother. He further stated that he resided at that address until he was incarcerated in January 2009. He noted that after he was released in September 2009 he returned to their residence at [REDACTED] and then moved into his sister's residence in [REDACTED] in December 2009.

The letter from the petitioner's spouse only partially supports counsel's assertions. The majority of the assertions in counsel's statement are unsupported by corroborating evidence in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if we considered counsel's assertions as evidence, numerous inconsistencies remain the record. For example, counsel stated that the petitioner's husband resided with the petitioner from June 2001 until December 2009. The petitioner, however, stated on her Form I-360 that she lived with her husband from November 1996 until August 2010. Counsel also stated that the petitioner resided at [REDACTED] from July 1996 until June 2001. The petitioner, however, in her initial statement provided that she resided with her mother-in-law in [REDACTED] for the first nine months of her marriage because she was unemployed. The response from counsel also does not resolve the [REDACTED] address listed on the petitioner's W-2 forms for 1997 through 2003. Nor does it explain the reason the petitioner's husband filed his 2006 tax return as "single" and listed his address as [REDACTED], [REDACTED] at a time when he was purportedly residing with the petitioner at [REDACTED].

In denying the petition, the director found that the evidence submitted in response to the NOID failed to resolve the inconsistencies in the record. On appeal, counsel discusses the evidence submitted below and asserts that the director has "overblown" the petitioner's "small mistake" in listing her move date as 2003 instead of 2001. Counsel contends that the "all credible evidence" standard is applicable in this case and is a "much lower standard" than the preponderance of the evidence standard.

In this case, as in most visa petition 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). For self-petitioning abused spouses and children, the statute further prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). See also 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard, however, is not equivalent to the petitioner's burden of proof. The numerous inconsistencies in the record related to the petitioner's marital residence detract from the credibility of the petitioner's claims and the weight given to the relevant evidence. Counsel's assertion that the director has "overblown" a mistake by the petitioner is not persuasive as the record contains numerous, unresolved inconsistencies. Accordingly, the record does not establish by a preponderance of the evidence 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 relevant evidence also fails to demonstrate the petitioner's entry into her marriage in good faith. In her initial affidavit, the petitioner stated that she met her husband in 1994 at a church concert in [REDACTED]. She briefly recounted that while they were dating they went to the mall, movies, dinner and parties. The petitioner stated that her husband surprised her by taking her to the courthouse to get married on November 15, 1996. She recalled that after their marriage, they moved into her mother-in-law's residence for nine months because she was unemployed. The petitioner stated that she was the sole caretaker of her mother-in-law during this time period. The petitioner recounted that after her mother-in-law's death she and her husband moved to [REDACTED]. The petitioner, however, failed to describe their joint residence or any of their shared experiences, apart from the alleged abuse.

As discussed, in response to the RFE, the petitioner asserted that she actually resided at [REDACTED] from July 1996 through June 2003 and moved to [REDACTED] from June 2003 through October 2009. She stated that her husband resided with her and he also resided with his mother in [REDACTED] Florida to help take care of his mother because she was ill at the time. The petitioner stated that after her mother-in-law's death her husband moved into her home at [REDACTED]. The petitioner in her second statement also failed to describe her joint residence with her husband, or any of their shared experiences. Her claim that her husband cared for his mother after their marriage is in conflict with her initial statement in which she claimed that she was the sole caretaker of her mother-in-law for the first nine months after their marriage.

The petitioner initially submitted an undated letter from her husband in which he briefly recounted that he has been in a relationship with the petitioner since July 1994. In response to the NOID, the petitioner submitted a second statement from her husband in which he provided his residential addresses during their marriage. However, he did not discuss their courtship, wedding ceremony, joint residence or shared experiences as a married couple.

The petitioner submitted letters from her sister-in-law, [REDACTED], and her father-in-law, [REDACTED], who attest to the petitioner's good moral character, but fail to discuss interacting with the petitioner and her husband as a married couple. The petitioner also submitted letters from her friends, [REDACTED], and her landlord, [REDACTED]. The petitioner's friends all attest to knowing the petitioner and her husband as a married couple, but they do not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

As additional documentary evidence, the petitioner submitted: two joint residential leases; joint tax returns for 2001, 2002, 2003, 2004, 2007 and 2008; three bank statements for a joint savings account; copies of photographs of the petitioner and her husband; a sales receipt addressed to the petitioner and her husband; a funeral program for the petitioner's mother-in-law; and copies of two greeting cards. Although these documents are considered relevant evidence, they do not establish by a preponderance of the evidence that the petitioner married her husband in good faith. As discussed, the petitioner submitted with a previous adjustment of status application, a 2006 tax return, which reflects her husband's marital status as "single" and shows his residence in [REDACTED] even though the petitioner

stated that he was residing with her in 2006 at [REDACTED]. The residential lease submitted by the petitioner as evidence of her joint residence with her husband at [REDACTED] from June 2001 until June 2004 does not contain her husband's signature. The previously submitted W-2 forms for the petitioner from 1997 through 2003 do not contain the [REDACTED] address, and instead list her address as [REDACTED]. The bank statements submitted as evidence of the couple's joint bank account do not reflect any account activity.

On appeal, counsel asserts that under the Board of Immigration Appeals (BIA) holdings in *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987), *Matter of Arias* 19 I&N Dec. 568 (BIA 1988), and *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990), a spousal visa petition cannot not be denied unless there is "substantial and probative evidence" of the marriage having been entered into for the primary purpose of obtaining immigration benefits. These cases are inapplicable to the instant proceeding because they discuss the standard for visa petition revocation proceedings under section 205 of the Act, 8 U.S.C. § 1155. Counsel has submitted no other evidence to establish that the petitioner married her husband in good faith. A full review of the record fails to establish the petitioner's good-faith entry into her marriage. The submitted documentary evidence contains numerous inconsistencies and deficiencies. In her statements, the petitioner does not describe her joint residence with her husband or any of their other shared experiences, apart from the alleged abuse. None of the petitioner's friends or in-laws discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage, or otherwise demonstrate their 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)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record also fails to establish that the petitioner's husband subjected her to battery or extreme cruelty. The petitioner recounted that she and her husband had three arguments during which he screamed at her, called her names and physically assaulted her. She stated that her husband offered to support her immigration petition if she helped pay child support he owed for a child he had from another relationship. The petitioner recounted that on the date she decided to leave their apartment, she found her husband looking for money and "in the process" he damaged the doorknob and wall. In her statement submitted in response to the RFE, the petitioner recounted that her husband would keep money from her and she had to protect herself by "putting away funds." The petitioner's statements do not indicate that her husband's behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Although the petitioner claims that her husband physically assaulted her and she submitted photographs of a crack on a wall and a removed doorknob, she failed to discuss the physical abuse in probative detail.

The letters submitted in support of the petition also fail to demonstrate abuse in the petitioner's marriage. In the petitioner's husband's undated letter, which the petitioner initially filed with the Form I-360 petition, he stated that he lied to the petitioner and was unfaithful to her. In his second letter, which the petitioner submitted in response to the NOID, the petitioner's husband stated that he had arguments with the petitioner and lost his temper. The petitioner's sister-in-law, [REDACTED]

[REDACTED], stated that the petitioner's husband "told her lies cheating don't want to work." The petitioner's landlord, [REDACTED], stated that she has witnessed "verbal disputes" between the petitioner and her husband. These statements do not demonstrate that the petitioner was subjected to extreme cruelty as that term is defined in the regulation.

The petitioner submitted a release report from the [REDACTED] Sheriff's Office reflecting that her husband was charged with burglary, cocaine possession and probation violations and a letter from the Florida Department of Revenue issued to her husband for child support enforcement. Although these documents demonstrate that the petitioner's husband was arrested for criminal activity and he was subject to a child support enforcement action, they do not show that the petitioner was the victim of any crime or civil violation committed by her husband.

A full review of the evidence fails to demonstrate that the petitioner was subjected to battery or extreme cruelty during her marriage. The petitioner's statements and the statements from her landlord, husband and sister-in-law do not demonstrate that she was subjected to extreme cruelty as that term is defined in the regulation. The petitioner claims that she was subjected to physical abuse, but she failed to provide detailed, probative testimony of the battery. Moreover, the petitioner stated that the incidents occurred in an apartment she shared with her husband, but she has not established that they jointly resided together. Accordingly, the preponderance of the evidence does not establish 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.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in November 2007 and ending in November 2010).

As evidence of her good-moral character, the petitioner initially submitted letters attesting to her good-moral character from her friends and family members. In response to the RFE, the petitioner submitted a completed fingerprint card, but did not include evidence of a criminal history background check based upon her fingerprints. The petitioner also submitted a local police background check from the [REDACTED] Sheriff's Office based on a name search. The police clearance provides that the petitioner does not have an arrest history in the agency's records. Although the record contains inconsistencies in the petitioner's evidence of joint residence with her husband, it establishes that the petitioner resided in [REDACTED] during the requisite period. The police clearance from the [REDACTED] Sheriff's Office, therefore, satisfies the requirement for a criminal background check. The petitioner, however, has not submitted an affidavit attesting to her good moral character. She was notified of this requirement in the RFE, but she failed to address her moral character in her affidavit submitted below and has not provided any additional affidavit on appeal. Accordingly, the petitioner has not established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that she has a qualifying relationship as the spouse of a U.S. citizen and she is eligible for immediate relative classification based on such a relationship. However, she has not demonstrated that she entered into marriage with her husband in good faith, they jointly resided together, he subjected her to battery or extreme cruelty during their marriage, and she is a person of good moral character. 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 and the petition will remain denied.

ORDER: The appeal is dismissed.