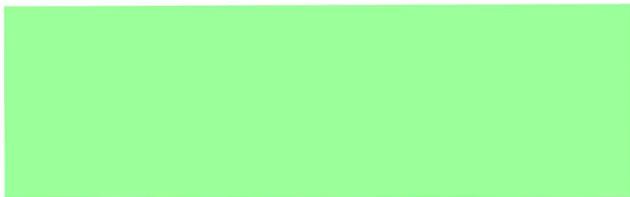




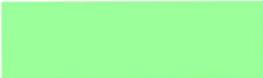
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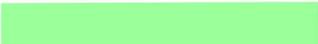


Date: **AUG 07 2013**

Office: VERMONT SERVICE CENTER

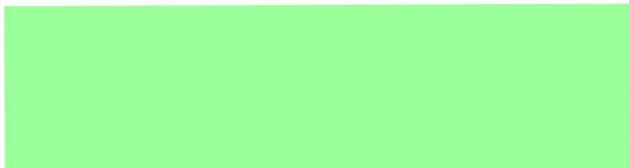
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IN RE:

Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, & U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 under 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 a United States citizen.

The director denied the petition for failure to establish that she entered into marriage with her United States citizen spouse in good faith and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner, through counsel, submits a brief 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 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)(1), which states, in pertinent part:

(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 or the self-petitioner's child, 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:

(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.

* * *

(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.

* * *

(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.

Facts and Procedural History

The petitioner, a citizen of Iran, married J-D-¹, a United States citizen, on November 9, 2007, in Istanbul, Turkey. She entered the United States on December 17, 2008 as a conditional permanent

¹ Name withheld to protect the individual's identity.

resident. The petitioner's conditional residency status was terminated on August 11, 2011. The petitioner filed the instant Form I-360 on September 9, 2011. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and entry into marriage with J-D- in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner 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.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavits, affidavits from friends, a statement from her mother, a letter from [REDACTED], Marriage and Family Therapist Intern (MFTI), and medicine prescriptions for an anti-depressant and a sleep aid. In her letter, [REDACTED] stated that she met with the petitioner for two sessions in May of 2012. She stated that the petitioner "presented with symptoms consistent with manifestation of a Major Depressive Disorder, Single Episode, Moderate to Severe." [REDACTED] further stated that based on the history that the petitioner provided, it appeared that the onset of the petitioner's depression was caused by the petitioner's relationship with her husband. While we do not question [REDACTED] professional expertise, her brief assessment does not state how she came to this conclusion and provides no further, substantive information demonstrating that the actions of J-D- constituted extreme cruelty. The medicine prescriptions show only that the petitioner was prescribed citalopram and zolpidem and do not demonstrate that J-D-'s treatment of her caused the petitioner's depression and insomnia.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In her first affidavit, the petitioner stated that after she arrived to the United States, she noticed that J-D- took prescription drugs that he claimed were for back pain. She stated that she noticed that he took these pills almost on a daily basis and that when they wore off, he would become agitated and pick on her. She stated that he lost interest in having sexual relations with her which caused her to doubt herself. She recounted that he smoked cigarettes and drank alcohol despite the fact that she did not like this behavior and that he also allowed his friends to stay late drinking at their place. Additionally, the petitioner stated that their "cultural and religious differences became more prominent" which caused problems in their marriage. The petitioner did not cite to specific examples or incidents of abuse or provide any probative details about J-D-'s treatment of her. The petitioner's statements do not demonstrate that her husband ever battered her, or that his behavior involved actual or 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).

In his first affidavit, [REDACTED] stated that he noticed that the petitioner was sad and that she told him that J-D- was addicted to prescription medicine. [REDACTED] stated that the petitioner suffered

psychologically from J-D-'s addiction and mood swings. In his second affidavit, [REDACTED] stated that the petitioner fell into a depression because of the pressures of her marriage and because J-D- was a drug addict who was emotionally abusing her. He did not, in his affidavits, describe whether specific incidents of abuse were personally witnessed or otherwise establish his knowledge of any abuse. In his first affidavit, [REDACTED] stated that J-D- was "not responsible enough to keep their marriage life." In his second affidavit, [REDACTED] stated that he used to have dinners with both the petitioner and J-D- but that J-D- stopped going out with them and the petitioner appeared to be unhappy. He stated that the petitioner told him that J-D- had changed due to an addiction to pain killers. [REDACTED] did not, in either of his affidavits, provide any probative information about the claimed abuse. In her declaration, [REDACTED] the petitioner's mother, stated that J-D was not reliable and that he humiliated her daughter. She stated that in addition to the religious and cultural differences, he was an addict who controlled the petitioner's telephone calls and electronic mail messages. She did not appear to have witnessed any of the claimed battery or extreme cruelty and she did not describe any incidents of abuse in probative detail. The director was correct in finding the submitted affidavits insufficient to demonstrate the petitioner's battery or extreme cruelty at the hands of J-D-.

On appeal, counsel asserts that the director oversimplified the abuse suffered by the petitioner but fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's husband constituted battery or extreme cruelty. Counsel further incorrectly asserts that specific instances of abuse were documented in the petitioner's affidavits and in [REDACTED] letter. The petitioner's affidavits, affidavits from her mother and friends, and the letter from [REDACTED] did not contain sufficient, probative information to establish the claimed abuse. 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.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that she married J-D- in good faith. The relevant evidence on the record contains the petitioner's affidavits, affidavits from two friends, a declaration from her mother, and photographs of the petitioner and J-D-. The photographs show that the petitioner and J-D- were pictured together but do not demonstrate that the petitioner married J-D- with good-faith intentions.

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 her first affidavit, the petitioner stated that she met J-D- through her aunt's ex-husband who was friends with J-D-. She stated that J-D- obtained her contact information and sent her an electronic mail message. She stated that they began talking in March of 2007 and met in person in October of 2007 in Turkey. The petitioner stated that during this trip, she realized she was in love with J-D- and said yes when he proposed even though her family had reservations about their union. She stated that they

married a few days later and that he returned to the United States to apply for her immigrant visa while she waited in Iran. The petitioner reunited with J-D- approximately one year later and described being happy. She did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In his first affidavit, [REDACTED] stated that the petitioner married J-D- in good faith. In his second affidavit, he stated that he visited the petitioner and J-D- at their home or they would go out together. He stated that they seemed happy and in love. In his first affidavit, [REDACTED] stated that although he never met J-D-, the petitioner told him about J-D- and that he could tell they were in love. In his second affidavit, he stated that he visited the petitioner and J-D- at their home or they would go out together. He stated that they seemed happy and in love. Neither affiant described any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. In her declaration, the petitioner's mother [REDACTED] stated that the petitioner met J-D- through her aunt and uncle. [REDACTED] stated that despite her opposition to the relationship, the petitioner and J-D- married during their trip to Turkey. She did not provide any probative details regarding the petitioner's relationship with J-D- apart from the claimed abuse.

On appeal, counsel submits a copy of a 2011 federal income tax return showing the petitioner's filing status as married filing separately. He asserts that good faith marital intentions can be shown by a shared marital residence and that the director erred in dismissing the submitted affidavits without explaining why the affidavits were insufficient. Here, the petitioner's statements and the statements of her friends and mother did not provide sufficient details regarding her relationship with J-D- to establish her good-faith intentions upon marrying J-D-. Likewise the 2011 tax return was filed when the petitioner and J-D- were separated and does not demonstrate that she married him in good faith. 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

The petitioner has not overcome the director's grounds for denial on appeal. She has not demonstrated that she was subjected to battery or extreme cruelty by her husband during their marriage and that she entered into marriage with him in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.