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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: **JUN 05 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 on the basis of his determination that the petitioner failed to establish that she resided with her husband and entered into her marriage in good faith. On appeal, the petitioner, through her Board of Immigration Appeals (BIA) accredited representative, submits a brief and additional evidence.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found

to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

* * *

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each

foreign country in which he or she 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 Russia who entered the United States on June 24, 2010 on a K-1 fiancée visa. The petitioner married her fiancé C-J-¹, a U.S. citizen, in Virginia Beach, Virginia on August 14, 2010. The petitioner filed the instant Form I-360 on August 18, 2011. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty by C-J- against her and of her good-faith entry into their marriage. The petitioner, through her BIA accredited representative, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has not overcome all of the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that she is a person of good moral character.² The appeal will be dismissed for the following reasons.

Joint Residence

The director determined that the petitioner had not resided with her husband. The regulation at 8 C.F.R. § 204.2(c)(2)(iii) lists the types of documents a petitioner may submit to establish joint residence; however, because domestic violence may prevent self-petitioners from access to traditional forms of documentation of marital residence, the regulation also prescribes that "any

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

other type of relevant credible evidence of residency may be submitted.” In this case, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with her husband during their marriage.

The petitioner stated on her Form I-360 that she last resided with C-J- in Denver, Colorado in November of 2010. The record contains the petitioner’s affidavit, affidavits from family and friends, and a copy of a health insurance card showing C-J- as a member with the petitioner and her son as his dependents. In her affidavit, the petitioner stated that when she arrived to the apartment that she shared with C-J-, she was surprised that C-J- had set up a room for her son with the promise of buying a bed for him later. The petitioner stated that after their wedding in Virginia, they returned to Colorado and C-J-’s attitude towards her and her son changed. She credibly described living with C-J- and recounted that C-J- did not like the fact that she still nursed her son. She stated that he became angry when her son would come to their bed at night and demanded that the little boy stay in his room at night. She further stated that since she could not drive, she was forced to stay at home which was difficult because there were no parks nearby where she could walk to with her son. The petitioner further recounted that they almost moved to a larger apartment but ultimately could not because the rent was too expensive. The petitioner also submitted a statement from her mother, [REDACTED] who described meeting C-J- during a family vacation after the petitioner entered the United States and recounted that afterwards, the petitioner moved to Colorado with him. Ms. [REDACTED] stated that she spoke to the petitioner on the telephone about the C-J-’s change in attitude once the petitioner and her son moved in with him. Ms. [REDACTED] further stated that she purchased train tickets for the petitioner and the petitioner’s son after C-J- became abusive to the little boy. On appeal, the petitioner submits a letter from the Social Security Administration addressed to her at their shared address. The petitioner provided credible, probative information regarding her joint residence with C-J- and when viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with C-J- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. Nonetheless, the appeal cannot be sustained because the petitioner has not overcome the remaining ground for denial and we find an additional ground of ineligibility.

Entry into the Marriage in Good Faith

The petitioner failed to establish that she married C-J- in good faith. The record contains the petitioner’s affidavit, affidavits from family and friends, wedding photographs, and a copy of a health insurance card. The photographs show that the petitioner and C-J- were photographed together at their wedding but are insufficient to establish that the petitioner married C-J- in good faith. The health insurance card shows C-J- listed the petitioner and her son as dependents on his health insurance policy but is also insufficient to demonstrate the petitioner’s good-faith marital 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 this case, the statements of the petitioner and her family and friends do not provide sufficient probative information to establish her good-faith intent upon marrying C-J-. In her affidavit, the petitioner stated that she met C-J- on the internet through an online dating site. She stated that she was searching for “Mr. Right” and someone who could be a good father to her soon-to-be born son. She stated that she liked C-J- from the beginning, they talked frequently through an online video chat, and C-J- traveled to Russia to meet her after her son was born. She stated that she fell in love during that visit and that he filed a fiancée visa on her behalf. She stated that while waiting for the visa application to be processed, they maintained contact by talking through an online video chat site and sending each other electronic mail and telephone text messages. She did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse. The petitioner’s mother, Ms. [REDACTED] summarized how the petitioner and C-J- met and described meeting C-J- after the petitioner arrived to the United States. She described the wedding but did not otherwise provide detailed information about the petitioner’s good faith intentions upon marrying C-J-. The affidavits from the petitioner’s friends attest to knowing the petitioner and C-J- as a married couple but do not recount any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. 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.

On appeal, the petitioner’s BIA accredited representative asserts that the director failed to take into consideration the fact that the petitioner entered into the United States as a K-1 fiancée and that United States Citizenship and Immigration Services (USCIS) already recognized the bona fides of the petitioner’s relationship with C-J-. 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.”). The statutory provisions and benefits procured through sections 101(a)(15)(K) (Form I-129F) 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-129F adjudication, in which he was required to establish his citizenship, in-person meeting with the beneficiary within the requisite two-year period prior to filing the Form I-129F, and his ability and intent to marry the beneficiary within 90 days of her entry. Section 101(a)(15)(K) of the Act; 8 C.F.R. Section 214.2(K). 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.

Good Moral Character

Beyond the director's decision, the petitioner failed to establish her good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. *See* 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* The petitioner attested to her good moral character in her affidavit submitted below and submitted a public record check from Colorado and Russia but did not provide a state issued criminal background check from Virginia. A review of the administrative record shows that she resided in Virginia for more than six months during the three-year period immediately preceding the filing of her Form I-360. A copy of a receipt for services from the Virginia Beach Circuit Court was submitted but the document does not indicate if a police records search was conducted and the results of the search. The record is therefore insufficient to establish her good moral character. Accordingly, the petitioner has failed to demonstrate 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 overcome the director's determination that she did not establish her joint residency with C-J-. However, the petitioner has failed to establish her good-faith entry into marriage with her husband and her 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 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will be denied.

ORDER: The appeal is dismissed.