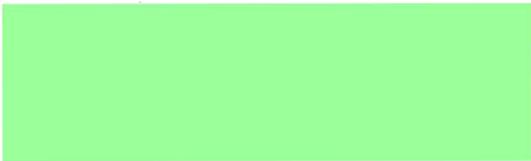




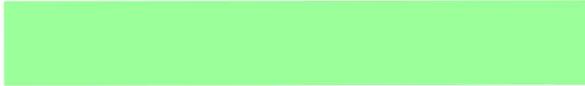
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: VERMONT SERVICE CENTER File: 

JUN 21 2013

IN RE: Self-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:

SELF-REPRESENTED

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 our 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 request 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 that any motion must 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, the petitioner submits 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 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.

* * *

(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.

* * *

(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 is a citizen of Grenada who claims to have entered the United States on June 20, 2002, with a nonimmigrant visitor visa. The petitioner married a U.S. citizen on December 10, 2010 in New York. The petitioner filed the instant Form I-360 on April 29, 2011. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. 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 timely appealed.

On appeal, the petitioner submits three affidavits from friends, a [REDACTED] account bill, photographs, and copies of previously submitted evidence.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the documents submitted on appeal, fails to establish the petitioner's eligibility. 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. In her affidavit, the petitioner stated that she met her husband at the Laundromat where she worked. She recounted that they started hanging out as friends, and after dating for one and a half years, they decided to get married. The petitioner did not describe in probative detail how she met her husband, their courtship, engagement, wedding, or any of their shared experiences, apart from the abuse.

The petitioner also submitted four affidavits from friends. [REDACTED] stated that the petitioner and her husband were married and that they spent time together. [REDACTED] noted that she went out with the petitioner and her husband, and that they were in love. She recalled that the petitioner's husband proposed to her and that she attended the wedding. In her affidavit, [REDACTED] reported that she met the petitioner's husband and that he and the petitioner were married. [REDACTED] stated that she went to the wedding and that the petitioner and her husband looked happy and in love. The affiants then discussed the husband's abuse of the petitioner. None of the affiants provided any substantive information regarding their observations of the petitioner's interactions and relationship with her husband prior to and during their marriage, nor did they provide any probative information regarding the petitioner's good faith in entering the marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her husband in good faith.

The petitioner also submitted a copy of her lease, [REDACTED] account statements, and photographs. The photographs are not accompanied by any explanation of their significance. The [REDACTED] statements list both the petitioner and her husband's name, but are all dated after the petitioner claims she separated from her husband. The lease does not provide any specific information regarding the petitioner's intentions in entering her marriage and the date on the lease conflicts with the date the petitioner provided on her Form I-360 regarding when she moved in with her husband, as discussed in the next section. Accordingly, the record below does not establish 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 provides three more affidavits, an additional [REDACTED] account statement, and photographs. [REDACTED] briefly states that she attended the petitioner and her husband's wedding and that they looked happy and in love. [REDACTED] notes that she knew the petitioner and her husband dated and that she saw them together. She also states that the petitioner's husband proposed, that she attended the wedding, and that they were happy. [REDACTED] recounts that she "hung out" with the petitioner and her husband and that he showed her affection. She also briefly states that the petitioner fell in love and was happy when they decided to get married, but she does not explain the basis for her knowledge. As noted above, the [REDACTED] account statement is dated after the petitioner separated from her husband, and thus does not provide evidence of the petitioner's good faith entry into her marriage. Although the petitioner has submitted photographs with brief captions, without any description of her intentions in marrying her husband, she has not shown by a preponderance of the evidence that she entered into her marriage in good faith. The affidavits submitted on appeal are insufficient to meet the petitioner's burden of proof in showing she entered into her marriage in good

faith as they do not provide any probative descriptions of the petitioner and her husband's interactions or the petitioner's intentions in entering into the marriage.

In this case, the testimonial evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith. The petitioner has submitted no probative, detailed account of her intentions in marrying her husband and their relationship. The petitioner's and affiants' brief statements are insufficient to sustain the petitioner's burden of proof in this matter. When viewed in the aggregate, the relevant evidence fails to overcome this ground for denial of the petition. 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.

Joint Residence

Beyond the decision of the director, the record fails to demonstrate that the petitioner ever resided with her husband.¹ On her Form I-360, the petitioner indicated that she resided with her husband from December, 2010, until January, 2011. In her affidavit, the petitioner stated that she and her husband did not live together until their wedding on December 10, 2010. However, the lease the petitioner submitted that lists both her and her husband as tenants shows the lease date as beginning on August 30, 2010, several months before the petitioner and her husband were married. Furthermore, the petitioner did not describe their home or shared residential routines in any detail. In her affidavit, [REDACTED] claimed that she attended parties at the petitioner and her husband's home and that she once went to their house to collect something, but she did not provide any probative description of her observations of the petitioner's and her husband's shared residence or her visits there. The petitioner submitted [REDACTED] statements in both her and her husband's names, but as stated previously, the statements are all dated after the petitioner and her husband separated and after they were no longer living together. No other evidence showing joint residence was submitted. Accordingly, the petitioner has not established that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act

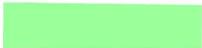
Conclusion

On appeal, the petitioner has failed to overcome the director's determination that she did not establish the requisite entry into the marriage in good faith with her husband. Beyond the decision of the director, the petitioner did not establish that she resided with her husband. 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

¹ A 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).

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Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.