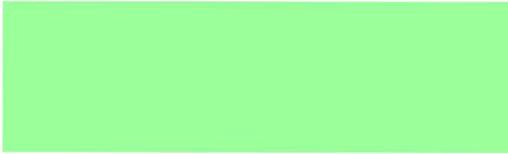




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUN 21 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:

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 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 United States citizen spouse.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen, her corresponding eligibility for immediate relative classification, joint residence with her husband, and entry into their marriage in good faith.

On appeal, the petitioner, submits 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

* * *

(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 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.

(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, if any, of . . . the self-petitioner

(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 Jamaica who entered the United States on August 18, 2000 as a B-2 visitor. The petitioner married T-C¹, a U.S. citizen, in Charlestown, South Carolina on August 1, 2001. The petitioner filed the instant Form I-360 on January 17, 2012. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, a qualifying relationship with her husband and eligibility for immediate relative classification based on such a relationship, the petitioner's joint residency with T-C-, and her good-faith entry into their marriage. The petitioner, through former counsel, 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 reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome 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.

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

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages. The petitioner initially submitted a South Carolina marriage certificate reflecting that she and T-C- wed on August 1, 2001. A review of the administrative record shows that the petitioner previously submitted a Form I-360 with accompanying Form I-485 Application to Register Permanent Residence or Adjust Status stating that she was divorced and engaged to O-G-³, the man she claimed as her abuser. In response to the RFE, the petitioner resubmitted a copy of her marriage certificate with T-C- but did not indicate whether or not they were still married as requested. The director correctly concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on that relationship.

On appeal, the petitioner submits a letter stating that she married T-C- in 2001 and that during that time he was abusive. She states that after being married for five years, she started a relationship with O-G- in 2006 while T-C- was in prison. She states that she had two children with O-G- and was engaged to be married with him. She further states that they never married because he was also abusive towards her. In her statement on appeal, the petitioner does not state whether or not she remains married to T-C- or provide an explanation for why she stated she was divorced in a previously submitted application to the U.S. Citizenship and Immigration Services (USCIS). Accordingly the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Joint Residence

The record fails to demonstrate that the petitioner resided with T-C-. The petitioner stated on her Form I-360 that she resided with T-C- from August of 2001 to November 2002 in South Carolina. The relevant evidence on the record contains the petitioner's statement, letters from friends, T-C-'s 2007 Wage and Tax statement, T-C-'s paystubs dated April of 2007, a medical report for the petitioner, and the petitioner's son's 2005 school records. The Wage and Tax statement and school records showed the same address but are dated after the petitioner claims she separated from T-C- and did not indicate her joint residence with him. The paystubs did not list an address and also failed to establish that the petitioner jointly resided with T-C-. The petitioner's medical report showed that the petitioner was a beneficiary of T-C-'s health insurance policy but on its own was insufficient to establish that the petitioner jointly resided with T-C-.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit

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).

³ Name withheld to protect the individual's identity.

“affidavits or any other type of relevant credible evidence of residency.” See 8 C.F.R. § 204.2(c)(2)(iii). In her first statement, the petitioner did not describe her shared residence with T-C- in any probative detail apart from the claimed abuse. She did not, for example, describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with T-C- after their marriage. In her letter submitted in response to the RFE, the petitioner stated that she destroyed her wedding pictures and other photographs because she did not want to be reminded of T-C-. The petitioner did not add probative information regarding her shared residence with T-C-.

Additionally, the director correctly determined that the petitioner had not established that she resided with T-C- because the letters from her friends did not provide probative details regarding the marital residence to overcome the lack of traditional forms of joint documentation. All the letters submitted on the petitioner’s behalf claimed to know that the petitioner married T-C- and resided with him in 2001 but they did not contain probative information about their shared residence or describe any particular visit in detail. On appeal, the petitioner submits a letter stating that she married T-C- and was with him for five years before moving on. This contradicts the dates she stated she lived with T-C- on the Form I-360 and no explanation is given for this inconsistency. She also submits letters from family and friends who briefly state that the petitioner married and had moved to South Carolina but they fail to provide probative information about the petitioner’s joint residence with T-C-. Consequently, the petitioner has not demonstrated that she resided with T-C- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

The petitioner failed to establish that she is a person of good moral character. Primary evidence of a self-petitioner’s good moral character is his or her affidavit. 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 submitted a New York State police clearance report as evidence of her good moral character. Upon review of the administrative record, it appears that the petitioner resided in South Carolina during the three-year period immediately preceding the filing of the instant Form I-360. The petitioner did not submit a police clearance from South Carolina and accordingly, 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.

Entry into the Marriage in Good Faith

The petitioner failed to establish that she married T-C- in good faith. The record contains the petitioner’s affidavit and brief statement, a medical report for the petitioner, letters from family and friends, T-C-’s 2007 Wage and Tax statement, T-C-’s paystubs dated April of 2007 and unidentified photographs of one occasion. The wage and tax statement and paystubs were dated five years after the petitioner and T-C- separated and did not establish that the petitioner married T-C- in good faith. The photographs showed the petitioner and T-C- pictured in separate photographs and also did not

establish the petitioner's marital intentions. The medical report alone was insufficient to establish that the petitioner married T-C- in good faith.

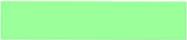
Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared 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 affidavit, the petitioner stated that she met T-C- in New York in January of 2001 when he came to visit his cousin who was also her friend. She stated that they went on dates, got to know one another, and kept in touch by telephone after T-C- returned to South Carolina. She stated that two weeks after Valentine's Day, T-C- visited her again and told her he wanted to get married. The petitioner recounted that she could not make a decision until she visited South Carolina so she accompanied him when he returned home. She stated that she liked the area and could see her and her son living there. The petitioner stated that she accepted his proposal and returned to New York City while they planned for their wedding before moving back down to South Carolina in mid-July for the wedding. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse. In a second, brief statement, the petitioner stated that she got rid of her wedding pictures and other pictures of her and T-C- together because she did not want to be reminded of him but also did not further describe their courtship, wedding ceremony, shared residence and experiences.

The letters from the petitioner's family and friends did not provide sufficient probative information to establish her good-faith intent upon marrying T-C-. [REDACTED] and [REDACTED] both stated that they knew the petitioner and T-C- as a married couple but did not describe any particular visit or social occasion in probative detail, or otherwise provide detailed information establishing their personal knowledge of the relationship. [REDACTED], [REDACTED] and the petitioner's cousin, [REDACTED], all stated that they were happy to hear about the petitioner's marriage to T-C- but also did not provide any probative information about the petitioner's marital intentions. On appeal, the petitioner submits a personal letter and additional letters from family and friends. In her letter, the petitioner explains that she left T-C- after five years of marriage and met someone else but does not provide any probative details about her relationship with T-C- apart from the abuse. The letters from her family and friends are brief and do not further provide any probative information establishing their knowledge of the relationship and the petitioner's good-faith intentions in marrying T-C-. When viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal does not demonstrate that the petitioner entered into marriage with T-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that she jointly resided with T-C-, entered into marriage with him in good faith, and is a person of good moral character. The petitioner has also failed to establish a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

(b)(6)



Page 8

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.