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

(b)(6)

U.S. Citizenship and Immigration Services

Date: OCT 2 5 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 (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
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 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 resided with her husband and entered into the marriage in good faith.

On appeal, the petitioner, through counsel, submits a brief.

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.
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> * * *
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> (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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Jamaica who entered the United States as a student on June 10, 2007. The petitioner married S-B-[1], a U.S. citizen, in Texas on September 20, 2010. The petitioner filed the instant Form I-360 on June 23, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residency with S-B- and good-faith entry into the marriage, and her husband's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's joint residency with S-B- and good-faith entry into the marriage. 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 and the appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the record failed to demonstrate that the petitioner resided with S-G-. The petitioner stated on her Form I-360 that she resided with S-B- in November 2010.

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[1] Name withheld to protect individual's identity.

The record contains the following relevant evidence: affidavits and a letter from the petitioner, a bank card statement showing the petitioner's name and S-B-'s address, and an airline itinerary, airline boarding passes.

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 "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). The petitioner stated in her affidavit dated June 9, 2011 that she was personally with S-B- on three occasions – the day they first met in April 2010; four days in September 2010, which includes the day they wed; and from November 12, 2010 until November 15, 2010. While she described her trip on November 12, 2010 to her husband's residence as her "official move to Texas," she also stated that she did not bring many possessions to Texas because she was still attending school in New York. She stated that 'I told him that I would move to Texas, but that for the short term I would still spend most of my time in New York until I finish school there.' Her statement indicates her intent to reside with her husband, but the record does not show that they actually lived together. Section 101(a)(33) of the Act prescribes that, as used in the Act: "The term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. § 1101(a)(33). In this case, the preponderance of the evidence shows that the petitioner's principal, actual dwelling place during her marriage was in New York, and apart from her husband's residence in Texas.

On appeal, counsel asserts that the record contains sufficient evidence to demonstrate that the petitioner resided with her husband, but is not extensive because S-B- abused the petitioner shortly after she moved to Texas to reside with him, and was attending school in New York. The petitioner has established S-B-'s battery or extreme cruelty and traditional forms of joint documentation are not required to establish the requisite shared marital residence. *See* 8 C.F.R. § 204.2(c)(2)(i), (iii). Accordingly, counsel's assertions are not persuasive regarding the petitioner's actual residence, as reflected in her own statements. While the petitioner claimed to relocate to her husband's residence in Texas on November 12, 2010, she also stated that she was attending school in New York and working there as well, and her flight itinerary shows her return to New York on November 15, 2010. In addition, the bank statement shows S-B-'s address, but the account activity reflects that the petitioner used the bank card while residing in New York. Accordingly, the record does not establish 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 director also correctly determined that the petitioner failed to establish that she married S-B- in good faith. The record contains the following relevant evidence: affidavits and a letter from the petitioner and from friends a bank card statement showing the petitioner's name and S-B-'s address, community college records, an airline itinerary, airline boarding passes, photographs dated September 20, 2010, and a cell phone invoice listing the dates September 24, 2010 through November 13, 2010.

The photographs show the petitioner's marriage ceremony, but do not establish her marital intentions. The bank statement, school records, and airline itinerary show that the petitioner resided in New York

after she married and are not probative of her good faith intentions in marrying. The cell phone statement shows that the petitioner called a phone number in Texas from September to November of an unspecified year, but the record does not identify her husband as the recipient of the calls and the phone statement alone is insufficient to establish the petitioner's marital intentions.

On appeal, counsel asserts that the evidence is not extensive due to abuse occurring early in the relationship, the dynamics of an abusive relationship, and the petitioner's husband's unwillingness to open a joint bank account or share resources with the petitioner. The petitioner has established S-B-'s battery or extreme cruelty, and 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). All credible relevant evidence will be considered including evidence regarding courtship, wedding ceremony, shared experiences, and affidavits of persons with personal knowledge of the relationship. *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner only briefly described in her affidavit how she met S-B-, their courtship, and wedding ceremony, and did not describe their shared experiences, apart from the abuse. The affidavits of Mr. and Ms. are not probative in establishing the petitioner's good-faith intent upon marrying S-B-. Ms does not mention having any personal knowledge of the petitioner's relationship with S-B-, apart from the abuse. While Mr. briefly stated that the petitioner told him she was contemplating marriage with S-B-, he does not provide any detailed account of his personal knowledge of her relationship with S-B-, apart from the abuse, and does not describe any particular residential or social visit with them. Ms. states that she was present at the petitioner's marriage ceremony. She does not describe the ceremony or provide any other information in her four-sentence letter to explain the basis for her assertion that the petitioner had "a real marriage."

In this case, 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

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 Otiende,* 26 I&N Dec. 127, 128 (BIA 2013); *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.