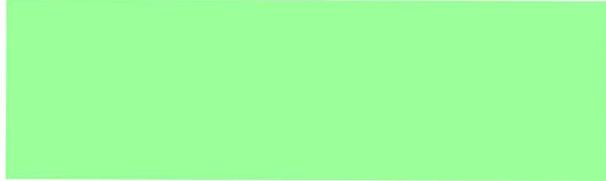


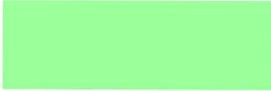
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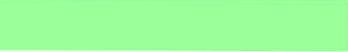


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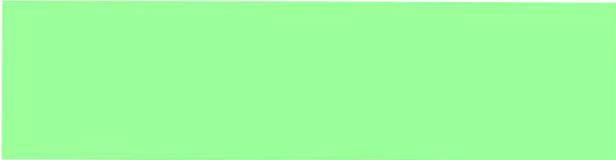
Date: **AUG 04 2014**

Office: VERMONT SERVICE CENTER File: 

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:



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

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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: (1) has a qualifying relationship with a U.S. citizen; (2) is eligible for immediate relative classification based upon that relationship; (3) entered into marriage with her husband in good faith; and (4) was subjected to battery or extreme cruelty by her husband.

On appeal, 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 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 . . . 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:

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.

(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

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Liberia who entered the United States on December 14, 2000 as a nonimmigrant visitor. The petitioner married her second husband, J-H-, a U.S. citizen, in Pennsylvania on September 9, 2006. The petitioner filed the instant Form I-360 on June 20, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's qualifying relationship with a U.S. citizen, her good-faith entry into the marriage and her husband's battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on *a de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome all of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Eligibility for Immigrant Classification

Because the petitioner stated on the Form I-360 that her marital status is "single," the director determined that the record does not demonstrate that the petitioner has a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship. On appeal, counsel contends that the petitioner's response as "single" on the Form I-360 was in clerical error. Counsel states that the record contains the petitioner's marriage certificate and she remains married to J-H-. A full review of the evidence submitted below shows that the petitioner has demonstrated that she is the spouse of a U.S. citizen. The petitioner provided below: J-H-'s Texas birth certificate; a copy of the certificate for her marriage to J-H- from the [REDACTED] Division in Philadelphia, Pennsylvania, dated September 9, 2006; and an original divorce decree from her first marriage, issued on March 28, 2003 in [REDACTED], Liberia. The petitioner indicated in her initial affidavit and the affidavit she submitted in response to the RFE that she remains married to J-H-. She has thus established that she has 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) of the Act.

Entry into the Marriage in Good Faith

The petitioner provided in her first affidavit, dated June 14, 2011, a probative, detailed and credible account of her good-faith intentions in entering the marriage with J-H-. The petitioner stated that she is a church pastor and first met J-H- in February 2006 on a Christian online dating website. She described in detail her initial contact with J-H-, their courtship and subsequent engagement. The petitioner stated that they wed at her church before their friends and relatives. The petitioner also provided a probative description of her experiences with J-H- when they resided together from September 2006 until September 2010. In response to the RFE, the petitioner provided numerous original photographs of her and J-H- at their wedding ceremony and reception, their church activities, and on other occasions.

In response to the RFE, the petitioner submitted supporting letters from: her brother, [REDACTED], her brother and sister-in-law, [REDACTED], her former roommate, Rev. [REDACTED], the administrator of her church [REDACTED] and her friend, [REDACTED] Mr. [REDACTED] stated that the petitioner is the founder and senior pastor at the [REDACTED]. He recounted that during the couple's courtship, the petitioner introduced J-H- to the church congregation and J-H- asked the church for permission to marry the petitioner. [REDACTED] stated that as the petitioner's oldest brother he participated in her wedding ceremony at the [REDACTED] and attended her wedding reception. [REDACTED] stated that they visited the couple for their wedding ceremony and on another occasion in 2009. Mr. and Mrs. [REDACTED] described in probative detail their conversations and interactions with the couple during these visits. Ms. [REDACTED] stated that she was residing with the petitioner when the couple first met in July 2006 and she was the maid of honor at the couple's wedding ceremony. Mr. [REDACTED] stated that he is a member of the [REDACTED] Church and he was the best man to J-H- during the couple's wedding ceremony. He recounted that J-H- stayed with him for two months during the couple's courtship and he felt that the couple got along well and appeared to be in love.

The petitioner submitted below the following relevant documentation: bank statement showing the couple's joint checking account for the period of May 2007 until February 2009; a September 2008 notice from [REDACTED] issued to J-H- with the petitioner listed as the emergency contact on the account; the couple's automobile insurance policy reflecting a start date of September 2006; and the couple's joint tax returns (Forms 1040) for 2007 and 2009. On appeal, the petitioner submits Internal Revenue Service (IRS) transcripts reflecting the couple's filing of joint tax returns in 2007, 2008 and 2009.

In denying the petition, the director stated that the petitioner's statements hold no evidentiary weight because on March 5, 2008, the AAO made a finding of fraud and willful misrepresentation of a material fact on the petitioner's Form I-360, self-petition for classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Act. On appeal, counsel asserts that the denial of the religious worker petitioner was the result of ineffective assistance of the petitioner's former counsel. Counsel contends that the director erred in finding a nexus between the finding of fraud in the petitioner's religious worker petition and the instant abused spouse petition and should not have raised the burden of proof. Counsel asserts that the petitioner's supporting evidence nevertheless establishes under the higher clear and convincing evidence standard that she married J-H- in good faith.

The special immigrant religious worker petition filed by the petitioner is a separate proceeding with a separate record. In this proceeding, we consider any credible evidence relevant to the eligibility criteria at section 204(a)(1)(A)(iii) of the Act and, accordingly, our finding of fraud and willful misrepresentation of a material fact in that separate proceeding does not necessarily render the evidence here without evidentiary weight. A full review of the evidence submitted below and on appeal establishes by a preponderance of the evidence that the petitioner married J-H- in good faith. The petitioner has submitted her own detailed, credible statements of her good-faith entry into the marriage, evidence of jointly filed tax returns, bank statements reflecting a joint account, evidence of a joint car insurance policy, numerous original photographs of herself and J-H-, and statements from her friends and family members who have demonstrated their personal knowledge of the relationship. When viewed in the totality, the preponderance of the evidence demonstrates that the petitioner entered into

marriage with her second husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

In her initial affidavit, the petitioner recounted that J-H- withheld sexual relations from her, did not help with cooking or cleaning, and he asked her to pay his bills. She stated that J-H- asked to be paid for the construction work he performed at the church when he should have instead volunteered his services. She stated that during their arguments, J-H- shouted, slammed doors and called her names. The petitioner recounted that in September 2010 J-H- had an argument about politics with her friend who was staying with them. She stated that J-H- asked her friend to leave the house and when her friend refused to leave, J-H- decided that he was leaving the relationship. The petitioner recounted that after their separation, J-H- took his belongings and other things from their house and church and she learned that J-H- had told the church members about her immigration status. She also stated that after their separation, J-H- refused to attend her immigration interview unless she paid him money. In response to the RFE, the petitioner recounted that J-H- had arguments with members of her church. She stated that J-H- used her credit card to purchase an airline ticket for his sister to visit him and he had a gambling habit. She stated that on one occasion they had an argument about church property. The petitioner recounted that J-H- pounded on walls and threw things. She stated that after their separation, J-H- presented himself as divorced on social media websites even though they remain married. The petitioner's description of J-H-'s violent behavior consists of only a one sentence statement that he "would pound on walls and throw things" and lacks any probative information of the alleged abuse. The remaining statements do not indicate that the petitioner's husband ever battered her or that his behavior involved 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).

The petitioner submitted in response to the RFE, two letters from J-H-. In the first letter, dated September 14, 2010, J-H- appears to be discussing his argument with the petitioner's friend that resulted in the couple's separation. In the second letter, which is also dated after the couple's separation, J-H- stated that he remodeled the couple's home and maintained the church during their four-year relationship. He stated that he expects to be paid for the work he performed for the church if the petitioner wants him to attend her immigration hearing. The statements from J-H- do not demonstrate that he subjected the petitioner to battery or extreme cruelty, as that term is defined in the regulation.

The petitioner's supporting letters also fail to provide probative information on any acts of battery or extreme cruelty in the petitioner's marriage. [REDACTED] stated that when she resided with the couple she witnessed J-H- yelling at the petitioner and calling her names. Her brief one-sentence description fails to probatively describe specific instances of battery or extreme cruelty. [REDACTED] stated that J-H- was "disrespectful and abusive" to the petitioner, but provided no other information on his knowledge of the alleged abuse. [REDACTED] stated that J-H- called the petitioner names and sold church construction materials. His description does not indicate that the petitioner was subjected to battery or extreme cruelty, as that term is defined in the regulation.

[REDACTED] stated that the petitioner informed them that J-H- called her names and was violent during arguments. They further recounted that the petitioner informed them that J-H- had

arguments with church members and expected payments for jobs that he should have done as a volunteer. Mr. and Ms. [REDACTED] reiterate the petitioner's statements and fail to provide additional probative information to demonstrate their personal knowledge of battery or extreme cruelty in the marital relationship.

In response to the RFE, the petitioner also submitted a letter from her [REDACTED] senior pastor of the [REDACTED] and a one-page letter signed by members of the [REDACTED]. Mr. [REDACTED] stated that he had a special role at the couple's wedding and was responsible for resolving their marital problems. He recounted that he tried to resolve the couple's disagreement over their finances. The behaviors described Mr. [REDACTED] do not constitute battery or extreme cruelty, as that term is defined in the regulation. The group letter from the petitioner's church briefly stated that J-H- abused the petitioner, but provided no information on any specific instances of battery or extreme cruelty.

On appeal, counsel provides excerpts from the petitioner's evidence. Counsel asserts that the petitioner has been the victim of emotional, verbal and economic abuse. A full review of the evidence submitted below and on appeal, fails to establish that the petitioner's husband subjected her to battery or extreme cruelty. The petitioner's brief statement that her husband "would pound on walls and throw things" lacks any probative information of the alleged abuse and her other descriptions of name calling and disagreements over finances do not constitute extreme cruelty, as the term is defined in the regulation. The statements from the petitioner's friends and family members also fail to provide probative descriptions of any acts of battery or extreme cruelty. Accordingly, the petitioner has not established that her second 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.

Conclusion

On appeal, the petitioner has established that she has a qualifying relationship with a U.S. citizen, is eligible for immigrant classification based upon that relationship, and that she entered into the marriage in good faith. However, she has failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.