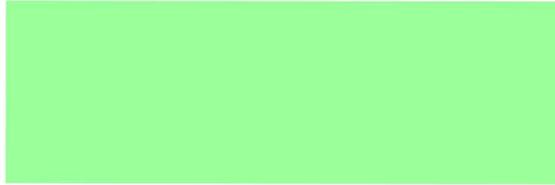




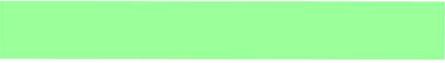
U.S. Citizenship
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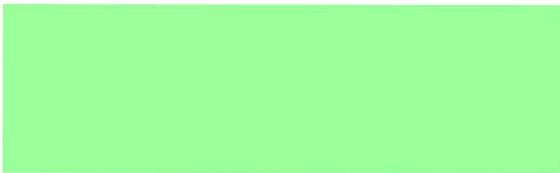
Date: **AUG 25 2014**

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,


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 entered the marriage in good faith. On appeal, counsel submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, that a spouse may self-petition under these provisions if she establishes:

(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 explained in 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.

* * *

(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 Ghana who entered the United States in February 2003 as a nonimmigrant visitor. She married R-S-¹, a U.S. citizen, on [REDACTED] in [REDACTED] Massachusetts. The petitioner filed the instant Form I-360 on August 20, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

The AAO conducts 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 fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed.

Entry into the Marriage in Good Faith

A self-petitioner must enter into marriage in good faith and not for the primary purpose of circumventing the immigration laws of the United States. See 8 C.F.R. § 204.2(c)(1)(ix). 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). 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). On appeal, counsel claims that at least fifteen relevant and credible documents establish the petitioner's good-faith entry into marriage. For the reasons described below, we find that the director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith marriage.

The petitioner initially submitted an affidavit stating she met R-S- through a mutual friend. She claimed they dated for approximately a year and five months. She described that the first year and a half of marriage was good and that they would hang out with friends, go to parties, and go to church together. The remainder of her affidavit described the abuse she suffered. In response to the RFE, the petitioner

¹ Name withheld to protect the individual's identity.

submitted an affidavit briefly repeating how she met R-S-, and adding that they enjoyed cooking together, going to the movies, and going out to eat. She described Christmas of 2007 as a happy time with R-S-'s family. The petitioner's affidavits failed to provide specific information regarding her relationship with R-S- and her intentions for marrying him. Apart from the abuse, her affidavits did not provide detailed information regarding the couple's courtship, wedding ceremony, or shared residence and experiences.

Although the petitioner claimed they spent time with friends and went to church together, letters from her friends and church do not provide any additional details that address the petitioner's marital intentions. For example, the petitioner's cousin, [REDACTED] stated that he attended the couple's wedding and celebration afterwards, but he provided no other substantive information regarding the couple's relationship or the petitioner's marital intentions. Similarly, [REDACTED] briefly recounted, in two sentences, going out with the couple, but he did not describe, for example, any specific contact with the petitioner and R-S-, any other particular visit or social occasion with the couple, or any interactions with the couple that would establish his personal knowledge of the relationship. In addition, although the record includes three letters from the petitioner's church describing her involvement with the church, aside from the church's intervention with respect to the abuse, the letters did not indicate that R-S- ever attended church with the petitioner, as she claimed, and there is no indication any church member had personal knowledge of the couple's relationship apart from the abuse.

The couple's 2007 joint tax return, a letter from the New York City's Office of Child Support Enforcement showing the couple's tax refund was intercepted to pay a child support debt, and photographs of the couple show the petitioner and R-S- have filed a joint tax return and were pictured together on a few occasions. However, several other documents, such as the Change of Address Notification from Mass Mutual Retirement and the Final Notice regarding late payment from [REDACTED] are addressed to R-S- alone and counsel does not discuss on appeal how these documents are relevant to the petitioner's marital intentions. The two joint bank account statements in the record show a maximum of \$50 in the account with no account activity during the two months. Without a more detailed, substantive description from the petitioner herself about her marital intentions, the preponderance of the evidence does not show the petitioner entered the marriage in good faith. The petitioner has not established her good-faith entry into the marriage, 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 entered into her marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.