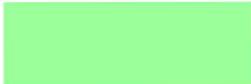


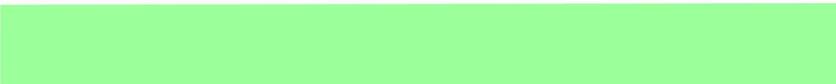


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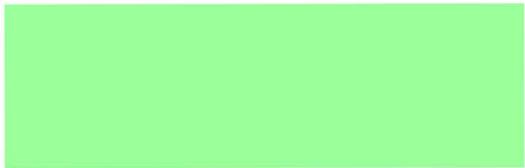


Date: **AUG 29 2014** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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 under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner resided with her former husband and married him in good faith.

On appeal, the petitioner submits a third affidavit.

Applicable Law

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

An individual who is no longer married to a lawful permanent resident of the United States remains eligible to self-petition under these provisions if he or she is an alien: "who was a bona fide spouse of a lawful permanent resident within the past 2 years and . . . who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse. . . ." Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC).

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 clause (ii) or (iii) of subparagraph (B) 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 explained 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)(B)(ii) of the Act are further explained 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 was born in Jamaica and last entered the United States on August 1, 2005, as an H-2B nonimmigrant worker. She married her former spouse, a lawful permanent resident, on August 27, 2009, in [REDACTED] Florida and divorced him on November 18, 2010. She filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on March 22, 2011. The director subsequently issued a Request for Evidence (RFE) that the petitioner resided with her former spouse and entered into the marriage in good faith. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these two

grounds. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. *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, and we will dismiss the appeal for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with her former spouse. On the Form I-360, the petitioner stated that she resided with her former spouse from August 27, 2009 to September 2010, and that their last joint address was an apartment on [REDACTED] Florida. In her initial affidavit, she provided the address of their shared residence, but did not specify the dates that she resided with her former spouse or describe their joint residence. She submitted a letter from her pastor who stated that he married the petitioner and her former spouse on August 27, 2009, and described episodes of abuse that he witnessed at their shared residence in [REDACTED] Florida.

The petitioner provided a copy of her Florida Identification Card, which was issued in 2005 and shows a different address in [REDACTED] Florida, but no other documents reflecting that she and her former husband shared a residence.

In response to the RFE, the petitioner included a copy of a lease agreement for the [REDACTED] apartment which she and her former husband both signed. The petitioner also submitted a new affidavit primarily focusing on her good faith entry into the marriage. She did not describe their joint residence. She stated that she was unable to provide further evidence because her former husband controlled all of their finances and did not make the documentation available to her. She also provided an affidavit from her sister, who said that she visited the petitioner, but did not explain whether she visited the petitioner at the shared marital address, describe the visit to the petitioner's marital home, or otherwise provide any substantive information regarding the petitioner's residence with her former husband. The petitioner included a second affidavit from her pastor in response to the RFE, who again attested that he married the petitioner and her former husband and that the petitioner was a member of the church for one year, but did not provide any other details about the petitioner's residence with her former husband.

On appeal, the petitioner submits a third affidavit in which she again explains that she is unable to provide additional evidence because her former husband controlled all of the finances and did not share the information with her. She says she tried without success to get more evidence from her former apartment building but building management instead sought to obtain back rent from her. The petitioner contends that since the agency has determined that she has good moral character and was abused, her sworn testimony is sufficient, credible evidence of her joint residence with her former spouse and good faith entry into the marriage.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a

petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “affidavits or any other type of relevant credible evidence of residency may be submitted.” 8 C.F.R. § 204.2(c)(2)(iii). In this case, the affidavits did not provide substantive information regarding the petitioner’s claimed residence with her former husband. Further, each eligibility criterion is separate. While the petitioner provided relevant evidence sufficient to establish that her former spouse abused her and that she has good moral character, it is not necessarily sufficient to demonstrate the other criteria.

In this case, the petitioner did not provide any probative account of her claimed residence with her former husband. Her pastor and sister did not describe visiting the petitioner and her former husband at their shared home. While the petitioner asserts that she lived with her husband and explains her lack of additional documentation, she does not describe, for example, their residence, joint belongings, shared residential routines, or otherwise provide any substantive information regarding their marital home. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her former husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner’s entry into her marriage in good faith. The petitioner initially provided an affidavit in which she briefly described her courtship and noted that she lived with her former husband at the address in [REDACTED]. She stated that her former husband began to abuse her after 10 days of marriage. She also provided a certificate of marriage. The petitioner also included an affidavit from her pastor, who described incidents of abuse that he witnessed, but did not discuss the petitioner’s courtship, the wedding ceremony that he performed for the petitioner and her former spouse, or provide any details regarding the petitioner’s good faith entry into the marriage.

In response to the RFE, the petitioner submitted a second affidavit in which she provided more details about her courtship. She stated that she was first introduced to her former husband in the summer of 2008 at church but that they did not begin to date immediately. She described their shared time at Bible study, church services, and concerts during their courtship. The petitioner explained that they married after her former husband agreed to be baptized and continued to attend church together after their marriage. However, she did not provide details of their wedding ceremony, and shared experiences after the wedding apart from the abuse. The petitioner included an affidavit from her sister, who stated that the petitioner dated her former spouse for two years before their marriage. This conflicts with the petitioner’s claim to have first met her former spouse one year before marriage, and to have dated only from March 2009 to August 2009. Her sister explained that she lived in Georgia, did not attend the petitioner’s wedding, and only saw the petitioner once after the wedding, when she was concerned because the petitioner’s husband was abusive. The petitioner’s sister did not provide a probative account of the visit or otherwise demonstrate her personal knowledge of the relationship.

The petitioner also provided a second affidavit from her pastor in response to the RFE. He briefly attested that he married the petitioner and her former husband, although he listed their date of marriage as August 7, 2010 when their marriage was in fact on August 27, 2009. The pastor stated that the petitioner was a member of the church for one year, but did not provide any other details about the petitioner's good faith entry into the marriage with her former husband.

On appeal, the petitioner submits a third affidavit. As previously discussed, in her third affidavit the petitioner explains that she is unable to provide additional evidence because her former husband controlled all of the finances and did not share the information with her. She states that her former spouse "wouldn't help me to file any paperwork with immigration so I have no social security number so I can't open a bank account with him and we couldn't have any joint assets." Apart from this explanation, the petitioner does not provide probative information such as details of her courtship with her former husband, their wedding ceremony, joint residence, and shared experiences.

USCIS must consider all credible, relevant evidence of the petitioner's good faith marriage, but the determination of what evidence is credible and the weight accorded that evidence lies within the Agency's sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i), (vii). In this case, the affidavits from the petitioner, her sister, and her pastor lack a probative account of the petitioner's marital relationship. The petitioner has not established by a preponderance of the evidence that she entered into marriage with her former spouse in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she resided with her former spouse or that she married him in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.