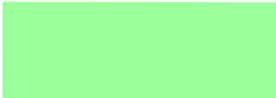


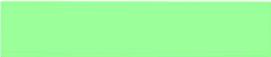


U.S. Citizenship
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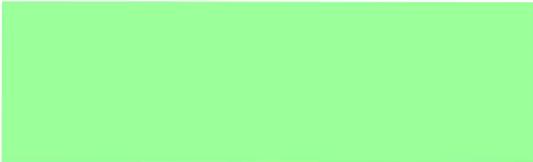


Date: DEC 01 2014 Office: VERMONT SERVICE CENTER File: 

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“acting director”), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director’s decision will be withdrawn and the matter remanded for entry of a new decision.

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 acting director denied the petition for failure to establish that the petitioner entered into the marriage in good faith. On appeal, counsel submits a brief and photographs.

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 for an abused spouse self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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. . . .

* * *

(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 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 . . . abuser. . . .

(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. . . . 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 France who entered the United States on March 29, 2010, as a nonimmigrant visitor. On August [REDACTED], the petitioner married N-W-¹, who the petitioner claims is a United States citizen, in Miami Beach, Florida. The petitioner filed the instant Form I-360 self-petition on May 13, 2011. The acting director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residence with her husband, her good-faith entry into the marriage, and her good moral character. The petitioner, through counsel, responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the petitioner has overcome the acting director's ground for denial. Nonetheless, the Form I-360 self-petition may not be approved because the petitioner has not established she has a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification. She has also not established that she resided with her husband during their marriage and her good moral character.

Good-Faith Entry into the Marriage

In her personal statement, the petitioner gave a probative, credible, and detailed account of how she first met N-W-, their courtship, and shared experiences. She explained that she first met N-W- through a friend, became a couple almost immediately, and were inseparable. She described specific activities they shared together, his marriage proposal, and her desire to live with him and her two sons together as a family. She recounted their wedding and the celebration afterwards, and submitted photographs of the occasion. The record also contains a statement from the petitioner's son, Warren, who described how his mother called him in France and told him she was falling in love with N-W-. According to [REDACTED] his mother wanted him and his brother to move to Florida so they could all live together. Warren stated that after he and his brother arrived in the United States, his mother pushed N-W- to do things together with all four of them. [REDACTED] described attending the couple's wedding and his personal observation that his mother was happy. The petitioner's friend, [REDACTED] who also attended the couple's

¹ Name withheld to protect the individual's identity.

wedding, similarly described his personal observation that the petitioner was in love with N-W-. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with N-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director's decision to the contrary will be withdrawn.

Joint Residence

The acting director concluded that although the petitioner did not establish that she and her husband maintained a shared residence, she did establish "something like a partial residence together rather than a full shared residence." On appeal, counsel continues to assert that the petitioner and her husband did, in fact, live together at two residences – the apartment she leased for her children and her husband's studio apartment. According to counsel, it is irrelevant whether the petitioner lived with her husband all day and all night, particularly considering their abusive and dysfunctional relationship.

After a careful review of the entire record, we conclude the petitioner has not met her burden of establishing that she resided with N-W-.² On her Form I-360 self-petition, the petitioner did not list the dates she lived with N-W- or the last address at which they lived together. The RFE informed the petitioner that her application was incomplete and specifically requested the dates she lived with her husband and the address where they last resided together. In response to the RFE, the petitioner did not answer these questions, but rather, stated that they "maintained two separate apartments [and] spent time between both residences." In her May 30, 2013 affidavit, she explained that when she was dating N-W-, she could not live with N-W- in his apartment because their friend, [REDACTED], sometimes stayed there and it was only a studio apartment. According to the petitioner, her twelve and eighteen-year old sons told her they were willing to move to the United States only if they could have their own house and not have to live with N-W-, who they had never met. The petitioner explained that she had to put her children first, so she found an apartment two blocks away from N-W-'s apartment and spent the days with her sons at their apartment, while spending the nights with N-W- at his apartment. She stated that her sons arrived in the United States on June 28, 2010, and that after she married N-W- on August 23, 2010, the same living arrangement continued with her "sleeping over at night."

The petitioner failed to provide any probative details of joint residency with N-W-. For example, she did not list an address or provide a lease for the apartment she purportedly rented for her sons, indicate if N-W-maintained the same apartment as when they were dating, or list the specific dates she began residing in each place. Further, she did not describe either apartment, any belongings the couple shared, or any other substantive information regarding her residence with N-W- during their marriage. Although the petitioner's son, [REDACTED] briefly recounted that before his mother married N-W-, she would go over his apartment at 9:00 or 10:00 p.m. to spend the night, Warren did not

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 *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).

address his mother's living arrangement after the wedding or provide any details regarding her joint residence with N-W- during their marriage. Statements from the petitioner's friends [REDACTED] did not describe any visit, interaction, or social occasion with the couple at either apartment or otherwise address the couple's joint residence.

Regarding counsel's argument that the "concept of a partial residence as opposed to a full residence constitutes a distinction . . . without an actual difference" because the petitioner and N-W- jointly resided in two residences, the Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The plain language of the statute indicates that a principal, actual dwelling place must be a singular location. Counsel cites no authority for his contention that an individual can maintain more than one principal, actual residence and the Board of Immigration Appeals has held that a succession of visits is insufficient to establish residence. *See Matter of Repuyan*, 19 I&N Dec. 119, 121 (BIA 1984) ("residence of a child with an adoptive parent entails more than a succession of visits by the adopting parent in the home of the child. The petitioner has not produced any evidence from which we can conclude anything more has occurred than such periodic visits"). In the instant case, the petitioner's statement consistently and repeatedly distinguished between "N[-W-'s] house" and "his house," and "my house," and "my apartment." Further, the petitioner did not provide any evidence, such as apartment leases, bills, insurance policies, or any other relevant documentation, to establish that her spending nights with her husband at "his house" was anything more than periodic visits. *Cf. Matter of Jalil*, 19 I&N Dec. 679, 680-81 (BIA 1988) (distinguishing physical presence from residence for purposes of continuity of residence for adjustment of status and stating that whether or not an applicant has established an "actual dwelling place" depends on the "nature of the circumstances" in a case). Consequently, the preponderance of the relevant evidence does not demonstrate that the petitioner resided with her husband during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Qualifying Relationship

Beyond the director's decision, the petitioner has not established she has a qualifying spousal relationship with a U.S. citizen. The petitioner did not provide evidence of her husband's U.S. citizenship status as required by 8 C.F.R. § 204.2(c)(2)(ii). The administrative record contains several variations of the petitioner's husband's name. The petitioner explained in her affidavit, dated May 30, 2013, that N-W- was adopted and that his adopted name was J-B-, but that after he found out about his birth mother, he changed his name back to his birth name of N-W-. The petitioner's husband's name is listed as "J-N-W-" on the instant Form I-360 self-petition. On the couple's marriage certificate, his name is listed as "J-N-W-,"³ and on the Order Denying Petition for Temporary Injunction from the Circuit Court of the Eleventh Judicial Circuit in [REDACTED] County, Florida, his name is listed as N-J-W-. A search of relevant U.S. Citizenship and Immigration Services (USCIS) records for all of these variations of the petitioner's husband's name failed to provide any evidence of his U.S. citizenship. *See* 8 C.F.R. § 204.1(g)(3). Consequently, the petitioner has failed to demonstrate that she has a qualifying relationship with a U.S. citizen and her

³ Although the initials are the same, the middle names and last names are different on the Form I-360 and the marriage certificate.

corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

Good Moral Character

Also beyond the director's decision, the petitioner has not established her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in May 2008 and ending in May 2011).

Although the record contains evidence that the petitioner requested a police record from the Directorate of Criminal Affairs and Pardons, National Criminal Records, in France, the record does not contain the results of this request. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that if police clearances, criminal background checks, or similar reports are not available, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The petitioner, however, has not addressed whether she has ever been arrested or convicted of a criminal offense in France. As the petitioner has not submitted local police clearances or state-issued criminal background checks, or provided an explanation for the lack of such a clearance for the requisite period, she has failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

Although the petitioner has overcome the director's sole ground for denial, several additional grounds preclude denial of the petition. Specifically, the petitioner has not established a qualifying relationship with a U.S. citizen and her corresponding eligibility for immigrant classification based upon such a relationship. She has also not established her good moral character and that she resided with her husband during their marriage. Accordingly, we remand the matter to the director for entry of a new decision into the record. The director may request other additional evidence deemed warranted and should allow the petitioner to submit additional evidence within a reasonable period of time.

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 acting director's decision, dated November 7, 2013, is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner shall be certified to the AAO for review.