

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date: **DEC 05 2014**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:  
[REDACTED]

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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 into marriage with her husband in good faith, they shared a joint residence, and she is a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

*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 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.

\* \* \*

(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:

(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.

\* \* \*

(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 Brazil who claims that she entered the United States in April 2005 without inspection. The petitioner married B-R-, a U.S. citizen, on April [REDACTED] in New Hampshire.<sup>1</sup> The petitioner filed the instant Form I-360 on December 17, 2012. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good-

<sup>1</sup> Name withheld to protect the individual's identity.

faith entry into the marriage, residence with her husband and good moral character. The petitioner, through counsel, timely responded to the RFEs 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.

We conduct appellate review on a *de novo* basis. Counsel's claims and the additional evidence on appeal fail to overcome the grounds for denial. The appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The relevant evidence fails to demonstrate the petitioner's entry into her marriage in good faith. In her initial unsigned statement, the petitioner recounted that she first met B-R- in September 2005 when they were both working at a factory in [REDACTED] New Hampshire. She stated that they began dating in October 2005 and during their courtship they separated after B-R- accused her of having an affair. The petitioner recounted that on November 18, 2005 she and B-R- resolved their issues and became engaged. She stated that they wed on April [REDACTED] at his aunt's home. The remainder of her statement focuses on the abuse in the marriage. In response to the RFE, the petitioner submitted the same statement in the form of a signed declaration. The petitioner discussed how she first met her husband and their courtship. However, she failed to probatively describe their wedding, joint residence or any of their shared experiences, apart from the abuse.

In response to the RFE, the petitioner submitted letters from her friends, [REDACTED] (last name illegible), [REDACTED] attested to knowing that the petitioner's marriage to B-R- was in good faith. [REDACTED] stated that she attend the petitioner's wedding to B-R- and knows that they were a "loving and caring couple." Neither of them discusses having any personal interactions with the couple. Nor do they provide substantive details to establish their personal knowledge of the relationship. [REDACTED] stated that the petitioner is a caring and trustworthy person, but she did not indicate that she had knowledge of the petitioner's marriage to B-R-.

The petitioner initially submitted a copy of an unsigned 2011 Individual Income Tax Return (Form 1040) in B-R-'s name, which shows his marital status as "married filing separately." The petitioner resubmitted the same tax return in response to the RFE (with no evidence that it was actually filed with the Internal Revenue Service). The single tax return, dated after the petitioner's October 2009 separation from B-R- is of no probative value in demonstrating the petitioner's good-faith entry into the marriage. She also submitted in response to the RFE, four undated photographs, which counsel indicated were of her wedding ceremony. The petitioner, however, failed to probatively describe her wedding ceremony in her statement submitted below. The director correctly determined that the petitioner failed to demonstrate by a preponderance of the evidence her good-faith entry into the marriage.

On appeal, counsel asserts that the lack of documentary evidence is the result of abuse and the petitioner's psychological evaluation demonstrates the petitioner's good-faith entry into the marriage. 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). Rather, 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.” 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the petitioner does not provide sufficiently detailed, probative information to establish her good-faith entry into the marriage. The psychological evaluation from [REDACTED] Ph.D., dated October 14, 2012, indicates that it was conducted to assess the psychological impact of abuse inflicted by B-R-. As a result, it fails to provide any substantive details on the petitioner’s wedding ceremony, joint residence or the couple’s shared experiences, apart from the abuse. The petitioner’s initial declaration also fails to provide this information. The petitioner resubmitted the same personal declaration in response the RFE and she submits it again on appeal with no additional information on her good-faith marriage with B-R-. None of the petitioner’s friends discuss in probative detail their observations of the petitioner’s interactions with or feelings for her husband during the couple’s courtship or marriage. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Joint Residence*

The record also fails to establish the petitioner’s joint residence with B-R-. On the Form I-360, the petitioner stated that she lived with B-R- from January 2006 until October 2009 and their last joint address was on [REDACTED] New Hampshire. In her declaration, the petitioner does not specify the dates of her residence with B-R- and she does not describe their home or shared residential routines in any detail, apart from the abuse. The four photographs the petitioner submitted are not identified as having been taken at any specific residence that she claims she shared with B-R-. The unsigned 2011 tax return she submitted only contains a post office box address and was prepared after her October 2009 separation from B-R-. The petitioner’s friends, [REDACTED] do not indicate that they have any knowledge of the petitioner’s residence with B-R- in their statements. Although the petitioner’s friend, [REDACTED] stated that she has knowledge of the petitioner’s residence with B-R- on [REDACTED] she does not indicate that she ever visited the couple at this residence or otherwise describe their residence together.

On appeal, counsel requests that we consider the petitioner’s psychological evaluation as evidence of the petitioner’s residence. The psychological evaluation provides that the petitioner moved into B-R’s trailer in January 2006 and they separated in October 2009. As the evaluation was written to assess the psychological impact of abuse, it offers no probative details of the petitioner’s shared residence with B-R-. The petitioner’s own declaration, documentary evidence and the supporting letters from her friends also fail to provide probative details of her joint residence with B-R-. Accordingly, the record does not establish by a preponderance of the evidence that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Good Moral Character*

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 December 2009 and ending in December 2012). The record reflects that the petitioner resided during the requisite period in New Hampshire and Massachusetts. The petitioner initially failed to submit any evidence of her good moral character. In response to the RFE, the petitioner submitted a criminal background check from the New Hampshire Department of Safety, Division of State Police. The police clearance is dated January 10, 2013 and provides that the petitioner does not have a record in the New Hampshire police criminal records unit under her maiden name. In the RFE, the director specifically notified the petitioner that if the police clearances were searched by name only, that she was required to supply the agency conducting the search with any and all names previously used. The petitioner, however, failed to obtain a police clearance or state-issued criminal background check under her married name, which she uses on the instant Form I-360.

The director determined that the petitioner failed to establish her good moral character because she did not submit a local police clearance or state-issued criminal background check from the location of her current residence in Massachusetts. On appeal, the petitioner submits a police clearance from the ██████████ Massachusetts Police Department, which provides that she has no criminal records with the department under an alternate spelling of her maiden name. The petitioner failed to obtain a police clearance under the maiden name she used on her passport and other identity documents or her married name. These documents therefore fail to satisfy the criminal background check requirement. In addition, the petitioner has not submitted an affidavit attesting to her good moral character. She was notified of this requirement in the RFE, but she failed to address her moral character in her declaration submitted below and has not provided any additional affidavit on appeal. Accordingly, the petitioner has not established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not established that she entered into marriage with her husband in good faith, they jointly resided together and she is a person of good moral character. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.