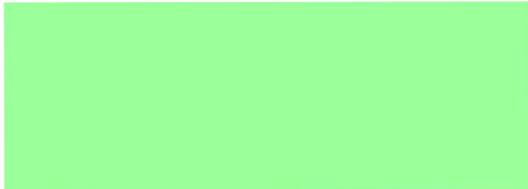
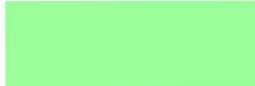


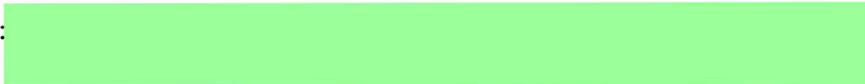


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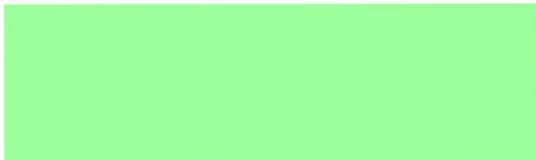


Date: **DEC 10 2014** Office: VERMONT SERVICE CENTER File: 

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 Acting Director, Vermont Service Center, (the director) denied the immigrant visa petition and the matter is now before the 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's husband battered her or subjected her to extreme cruelty, the she resided with him, and that she married him in good faith. On appeal, the petitioner, through 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:

(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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(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.

(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, a citizen of Mexico, entered and exited the United States numerous times on a B1/B2 nonimmigrant visa border crossing card issued in November 2000. The petitioner last entered the United States on December 24, 2010. The petitioner married C-B-<sup>1</sup>, a U.S. citizen, on January [REDACTED] in San Diego, California, and filed the instant Form I-360 on March 27, 2012. The director subsequently issued Requests for Evidence (RFEs) for battery and extreme cruelty, joint residence, and good-faith entry into the marriage, among other issues. The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition and counsel timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Good-Faith Marriage*

The preponderance of the relevant evidence does not establish that the petitioner married her husband in good faith. In a personal affidavit dated January 5, 2012, provided with the petitioner's initial Form I-360 submission, the petitioner stated that she met C-B- in 2009, they later began to date, and they married in January of 2010. She also submitted four unlabeled photos of the petitioner and C-B- on three occasions. In response to the director's second RFE, the petitioner submitted an additional affidavit dated July 10, 2013, in which she briefly described meeting C-B- on a shopping trip with her grandmother to a mall in [REDACTED] California. The petitioner recounted e-mailing with C-B- after their initial meeting, and subsequently meeting C-B- several times in [REDACTED]. The petitioner indicated that C-B- asked her to be his girlfriend in the summer of 2009, and that he proposed to her at the end of that year. The petitioner also submitted an affidavit from her grandmother, [REDACTED] in which Ms. [REDACTED] attested that during a shopping trip in 2009, the petitioner met C-B- while waiting outside the store in which Ms. [REDACTED] was shopping. The petitioner also submitted an affidavit from her mother, [REDACTED] describing a positive change in the petitioner's mood after she began e-mailing with C-B-, and recounted being favorably impressed by C-B- when the petitioner brought him to their home to meet her. Ms. [REDACTED] stated that when the petitioner told her in November 2009 that she and C-B- planned to marry she was initially opposed to the marriage because she believed that it was too soon. Ms. [REDACTED] indicated that she visited the petitioner and C-B- in the home they shared after they got married and the petitioner began to reside with C-B-.

In her decision, the director discounted the petitioner's statements regarding her good-faith marriage as not credible due to additional details of abuse contained in the petitioner's second statement. The director acknowledged that the third-party affidavits contained relevant details regarding the petitioner's good-faith entry into her marriage, but did not find the evidence sufficient to satisfy the petitioner's burden of proof.

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

On appeal, the petitioner submits an affidavit from her aunt, [REDACTED] dated September 24, 2013. In the affidavit, Ms. [REDACTED] recounts having lunch with C-B- and the petitioner in [REDACTED] approximately two weeks before the couple married. She indicates that she witnessed the couple's marriage at the court, and had lunch with the couple and the petitioner's grandmother after the ceremony, but does not provide probative details regarding these events. She describes having lunch with the petitioner and C-B- in their home in [REDACTED] before the relationship deteriorated. The petitioner also submits an additional affidavit from her grandmother, [REDACTED] dated September 24, 2013. In the affidavit, Ms. [REDACTED] again indicates that the petitioner would accompany her to [REDACTED] and meet up with C-B- at the shopping center on those occasions, but did not provide further probative information about the couple's courtship. Ms. [REDACTED] attests to being present at the couple's wedding ceremony at the courthouse, but does not describe the occasion except to note that she had lunch with the couple after the ceremony, and they took a walk around the bay. Ms. [REDACTED] states that she visited the petitioner at the apartment in [REDACTED] during her regular trips to the United States to make purchases, and that she brought tamales to the couple from Mexico at C-B-'s request.

*De novo* review of the relevant evidence, as supplemented on appeal, is not sufficient to establish by a preponderance of the evidence that petitioner married C-B- in good faith. While director should not have found that a perceived discrepancy regarding the petitioner's claims of abuse detracted from the credibility of her statements related to her good-faith entry into the marriage, the record nonetheless lacks sufficient probative information to establish the petitioner's intent in marriage. Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation 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). However, the petitioner must still prove by a preponderance of the evidence that she married C-B- in good faith. In lieu of traditional evidence, 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). The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act. Here, the petitioner's affidavits, although credible, contain little probative information regarding her courtship with C-B-, their wedding ceremony, or shared experiences beyond the details of the abuse. The third-party affidavits also lack probative testimony regarding the petitioner's courtship, wedding ceremony, or shared experiences that might establish the petitioner's intent in marriage. The significance of the unlabeled photographs of the petitioner and C-B- on three occasions has not been described. The record, as currently constituted, does not demonstrate by a preponderance of the relevant evidence that the petitioner married her U.S. citizen spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Joint Residence*

The preponderance of the evidence does not establish that the petitioner resided with her U.S. citizen spouse. In the Form I-360, the petitioner stated that she resided with her husband from January 2010 until May 2010 on [REDACTED], California. In her personal affidavit dated

January 5, 2012, the petitioner asserted that she moved into the apartment that he shared with a roommate after they married, and resided there until C-B- was jailed, at which point she moved in with her aunt because she did not have money to pay the rent, and she did not want to stay alone with their roommate.

In the RFE, the director noted that two Forms G-325A, Biographic Information, submitted by the petitioner, contain dates and locations of residences that conflict with the petitioner's personal affidavit. The director observed that the petitioner's first Form G-325A, signed in May 2010 and submitted in support of a Form I-485, Application for Adjustment of Status, indicated that her only U.S. address was on [REDACTED] California from April 2010 to May 2010. On her second Form G-325A, the petitioner stated that she lived at the [REDACTED] apartment from January 2010 to September 2010.

In response to the RFE, the petitioner submitted an additional personal statement dated July 10, 2013, in which she again attested to residing with C-B- at the apartment that he rented. She also submitted an affidavit from her grandmother, [REDACTED] in which Ms. [REDACTED] stated that she visited the petitioner often at the home she shared with C-B-. The petitioner's mother and brother also attested to visiting the petitioner at the apartment where the petitioner resided with C-B-. However, neither the petitioner's personal affidavit, nor the third-party affidavits describe the residence in probative detail.

In her decision, the director indicated that the third-party affidavits contained some information regarding the petitioner's joint residence with C-B-, but discounted the petitioner's own statements due to the discrepancies in the Forms G-325A, and the petitioner's statements regarding the location and length of time that she resided with C-B-.

On appeal, the petitioner submits an affidavit from her aunt, [REDACTED] in which Ms. [REDACTED] briefly states that she had lunch with the petitioner and C-B- in their home in [REDACTED] early in their marriage, and that she visited them there on other occasions, but did not provide probative information regarding these visits beyond the details of the abuse. The petitioner also provides a second affidavit from her grandmother, dated September 24, 2013, in which Ms. [REDACTED] indicates that she visited the petitioner and C-B- at their apartment in [REDACTED] on several occasions, and that she met the petitioner's and C-B-'s roommate. However, she does not provide probative information regarding the residence. In addition, the petitioner submitted a letter from [REDACTED] dated September 14, 2013. In the letter, Ms. [REDACTED] attests to letting the petitioner and C-B- utilize her address in May 2010 to receive mail because they felt their [REDACTED] address was not safe and their mail might be lost. Ms. [REDACTED] submits a Homeowner's Exemption Notice dated, April 27, 2007, showing that she owned and occupied the [REDACTED] residence. The petitioner submits extensive court documentation showing that C-B- was arrested and pled to robbery charges in May 2010, and was subsequently sentenced to sixty days of jail time. The petitioner also provides several unlabeled photographs of the outside of an apartment complex, and a door labeled "6K."

*De novo* review of the relevant evidence, as supplemented on appeal, does not establish by a preponderance of the evidence that the petitioner resided with C-B- during their marriage. The record contains only one document—the petitioner's marriage certificate—associating her with the [REDACTED] apartment in [REDACTED] which is the only address that she claims to have shared with her spouse. Neither the petitioner's personal affidavits, nor the third-party affidavits provide probative testimony regarding the petitioner's joint residence with her husband. The petitioner provided a credible explanation for failing to utilize the [REDACTED] address on her immigration paperwork filed in May 2010; however, on appeal the petitioner does not acknowledge or resolve the discrepancies in her representations regarding the date upon which she ceased to reside at the [REDACTED] apartment. When viewed in the aggregate, the preponderance of the relevant evidence does not establish that the petitioner resided with her U.S. citizen spouse during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Battery and Extreme Cruelty*

In her first affidavit, dated January 5, 2012, the petitioner stated that after she married C-B- and moved into his apartment, he began to change. She stated that C-B- would sometimes come home inebriated and responded aggressively to the petitioner's inquiries regarding his drinking habits. The petitioner recounted that the couple argued frequently about C-B-'s friends with whom he stayed out late, and the petitioner did not trust. The petitioner indicated that when she later asked questions about his friends, C-B- became angry and threw food; however, he later apologized for his behavior. The petitioner recounted that as time went on, C-B- invited friends to their house who made her uncomfortable. She indicated that that they would stay at the apartment drinking until late at night, and it was her impression that C-B- was using drugs. The petitioner credibly described how C-B- battered her on several occasions when she confronted C-B- about his friends. The petitioner also discussed their frequent arguments, which often ended in C-B- throwing food at the petitioner, but were followed by periods when C-B- was loving and apologetic about his actions.

In response to the RFE, the petitioner submitted a second affidavit in which she again credibly described arguments between her and C-B- regarding his friends, who the petitioner felt exerted bad influence on him. The petitioner stated that C-B- told her to stay in the bedroom when his friends came over. The petitioner indicated that C-B- did not allow her to leave the house alone, and often argued with her in front of her family members when they came to visit. She recounted an argument that occurred in the presence of her grandmother during which C-B- became physically aggressive, and another occasion when he physically removed the petitioner from the apartment. The petitioner described C-B- battering her during some of their arguments. Also in response to the RFE, the petitioner submitted an affidavit from her grandmother dated June 18, 2013, in which her grandmother described an occasion when she observed C-B- throw a plate of food at the petitioner during an argument, and another occasion when C-B- locked the petitioner out of the apartment. The petitioner submitted an affidavit from her mother, who attested to noticing that the petitioner had very little food in the pantry on the occasions that she visited, and that C-B- argued often with the petitioner. In an affidavit dated June 29, 2013, the petitioner's aunt, attested to the petitioner looking fearful and timid in C-B-'s presence, and that the petitioner became withdrawn during her marriage.

In her decision, the director discounted much of the relevant evidence due to perceived inconsistencies and found that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her husband. On appeal, the petitioner provided an additional affidavit from her aunt, [REDACTED] recounting incidents of C-B-'s verbal abuse of the petitioner that she personally witnessed, and C-B-'s physically abusive behavior as described to her by the petitioner. The petitioner also submitted an additional affidavit from her grandmother, who further describes an incident where C-B- threw food at the petitioner in a fit of anger.

*De novo* review of the evidence, including the evidence submitted on appeal, shows that the petitioner has established that she was battered and subjected to extreme cruelty by her U.S. citizen spouse. The petitioner must demonstrate that her spouse battered or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Here, the petitioner credibly and probatively described how she was battered by C-B- in her two affidavits. Her claims are further supported by third-party affidavits that credibly depict an on-going pattern of abuse. The petitioner has established by a preponderance of the relevant evidence that she was battered by her U.S. citizen spouse as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Conclusion*

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). On appeal, the petitioner has demonstrated that she was battered and subjected to extreme cruelty by her U.S. citizen husband; however, the self-petition is not approvable because the record, as currently constituted, lacks probative evidence sufficient to establish that the petitioner resided with her husband and married him in good faith. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.