U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: DEC 1 2 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 based on the petitioner's failure to establish her good moral character, that she resided with her husband, 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:

> (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.
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> (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 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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, a citizen of Uzbekistan, last entered the United States on March 9, 2003 as a nonimmigrant visitor. She married J-K-[1], a U.S. citizen, on June New York. J-K- filed an immigrant visa petition for the petition, which U.S. Citizenship and Immigration Services (USCIS) subsequently denied as abandoned. The petitioner filed the instant Form I-360 self-petition on January 7, 2009. The director subsequently issued requests for additional evidence (RFEs) of the petitioner's good moral character, her good-faith entry into the marriage, and joint residence with her spouse, 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, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

Joint Residence

The preponderance of the relevant evidence does not establish that the petitioner and J-K- resided together during their marriage. On the Form I-360 self-petition, the petitioner indicated that she resided with J-K- from March 10, 2003 until November 5, 2005, and that she last resided with J-K- at an apartment on New York. In her personal affidavit, dated October 20, 2008, the petitioner stated that she began residing with J-K- when she first arrived in the United States in February 2002. The petitioner stated that they lived together in a two bedroom apartment and married on June However, the marriage certificate provided by the petitioner indicates that she and J-K- were residing at different addresses at the time of their marriage in June 2004. The address listed for J-K- was the apartment on in the while the petitioner was identified as residing on

In response to the RFE, the petitioner submitted a letter dated May 22, 2010, in which she stated that the date upon which she began residing with J-K- was erroneously reported on the Form I-360 by the individual who completed the form on her behalf. The petitioner stated that she began residing with J-K- in February 2002, but did not state at what address, or provide any

[1] Name withheld to protect the individual's identity.

probative description of the residence. The petitioner also provided a lease effective June 1, 2004 to May 31, 2006 for the apartment, with the names of both the petitioner and J-K- appearing in the section captioned "LANDLORD." In addition, the petitioner submitted an undated check in the names of her and J-K- with the apartment address. The memo portion of the check states "Apt. rent for Sept. 2004." The petitioner also submitted an Internal Revenue Service (IRS) Form W-9, Request for Taxpayer Identification Number, dated August 12, 2004, which identifies J-K- at the apartment, and correspondence regarding a credit card, dated August 2004, mailed to the petitioner at the apartment.

In her decision, the director noted that the documents that show the petitioner residing with J-K- at the address for the period of June 1, 2004 to May 31, 2006 are inconsistent with the petitioner's statement on the Form I-360 that she last resided with J-K- in 2005 at an apartment on The director further noted the additional irregularities of the lease agreement for the apartment, that the rent check submitted did not appear to have been deposited, and that the bank statement showed insufficient funds in the account to cover the amount of the check. The director found that the discrepancies diminished the credibility of the evidence, and denied the petition.

On appeal, counsel asserts that the petitioner was taken advantage of by Mr. who prepared and filed her Form I-360, and responded to the RFE on her behalf. Counsel states that Mr. falsely claimed to be an attorney, and completed the petitioner's immigration paperwork without appropriate consultation with the petitioner. Counsel asserts that the petitioner and J-K- signed the lease without realizing that it listed them as landlords instead of tenants, and claims that such an error should not affect the validity of the document. Counsel maintains that the lease is genuine, and submits an additional copy on appeal. However, neither counsel nor the petitioner, in her personal affidavit submitted on appeal, address the irregularities noted or the discrepancy in the dates of the lease, and the petitioner's claim on her Form I-360 that she last resided with J-K- at the apartment in 2005. In her November 23, 2010 personal affidavit, the petitioner listed the errors on her Form I-360; however, the petitioner did not claim that the date and place at which she last resided with J-K- was erroneously reported. The petitioner states that Mr. forged her signature on the rent check, but does not claim that the lease was fraudulent or inaccurate. Neither the petitioner nor counsel provides the dates that the petitioner purportedly resided with J-K- at the two different addresses, or otherwise address the discrepancies in the record as described by the director. In addition, the inconsistency between the petitioner's claim that she began residing with J-K- immediately upon arrival in the U.S., and the indication on the petitioner's and J-K-'s marriage certificate that the couple was residing at different addresses at the time of their marriage detracts from the credibility of the petitioner's statement.

The petitioner has not provided consistent information regarding where and when she resided with J-K- and the inconsistencies between her statements and the relevant evidence have not been acknowledged or addressed. Further, the documents submitted below and on appeal do not contain a probative description of the petitioner's joint residence with J-K- at any location or for any time period. Consequently, a preponderance of relevant evidence does not demonstrate that the petitioner resided with her spouse during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The preponderance of the relevant evidence does not establish that the petitioner married J-K- in good faith. With her initial Form I-360 self-petition submission, the petitioner provided a personal affidavit dated October 20, 2008. In the affidavit the petitioner stated that she met J-K- on a trip to the U.S. in 2001. The petitioner asserted that during this initial trip J-K- told her that he was in love with her and wanted to marry her. The petitioner stated that she returned to the U.S. in February 2002[2], and immediately began residing with J-K- in a two bedroom apartment, and indicated that they resided together for 15 months before they married in June 2004 in a small ceremony. The petitioner did not describe her courtship with J-K- beyond their initial meeting in 2001. She did not provide a probative account of their wedding ceremony, shared experiences during their alleged 15 months of joint residence prior to marriage, or shared experiences during their marriage beyond the details of the abuse.

In response to the RFE, the petitioner provided the lease for the apartment, the irregularities of which are described above. In addition, the petitioner provide documentation that she and J-K- opened a joint bank account in August 2004, and a bank statement showing a high balance of $100, which was deposited on the date the account was opened. The petitioner also submitted unlabeled photographs of her and J-K- on three occasions, including photographs of what appear to be their wedding ceremony. The petitioner did not explain the significance of the photographs or provide a probative account of her shared experiences with J-K-. Thus, the photographs do not provide probative information regarding the petitioner's intent in marriage.

The director correctly found that the relevant evidence submitted below was not sufficient to establish that the petitioner married J-K- in good faith. On appeal, in an affidavit dated November 23, 2010, the petitioner indicates that Mr. made numerous mistakes on her Form I-360, but does not assert that the contents of her October 20, 2008 statement were incorrect. The petition briefly states that she gave her money to J-K- and that he handled all of their finances. She indicates that she was unaware that the joint bank account was not actively utilized until she separated from J-K-. However, in her affidavit, the petitioner did not provide any further information regarding her good-faith entry into marriage with J-K-.

Although the petitioner and counsel address the minimal activity in the petitioner's joint bank account, the lack of commingled finances is not dispositive in this matter. Under section 204(a)(1)(A)(iii) of the Act, 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.

[2] The petitioner's Form I-94, Departure Record, shows that she was last admitted to the United States on March 9, 2003. The petitioner submitted a photocopy of her B1/B2 nonimmigrant visa, and a page of her passport bearing stamps that appear to indicate that she was admitted to the U.S. in February 2001 and February 2002. The petitioner claims to have resided with J-K- since her arrival in the U.S. in February 2002; however, she has not acknowledged leaving the U.S. after her February 2002 arrival, and it is not apparent from the record how long she was outside the U.S. before returning in March 2003.

All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner's affidavits, submitted below and on appeal, do not contain probative information regarding the couple's courtship, wedding ceremony, and other shared experiences beyond the abuse, nor did the petitioner submit affidavits of persons with personal knowledge of the relationship to support her claims. The petitioner provided a brief description of her initial meeting with J-K- in 2001, but did not include probative testimony regarding their ensuing courtship, which according to the petitioner, resulted in her returning to the United States the following year to reside with and marry J-K-. On appeal, counsel emphasizes that any credible evidence should be considered in adjudicating the petitioner's Form I-360, as required by section 204(a)(1)(J) of the Act. A review the entire record does not show that the director impermissibly discounted credible evidence. Rather, the record lacks the required documentation of the petitioner's intent in marrying J-K-, as described in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). In addition, the discrepancies in the record regarding the petitioner's shared residence with J-K- detract from her claims that she returned to the United States to reside with J-K-.

The preponderance of the relevant evidence submitted below and on appeal does not demonstrate that the petitioner entered into marriage with J-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

The director did not err in finding that the petitioner did not submit evidence to establish her good moral character. On appeal, the petitioner provides an affidavit dated November 23, 2010 asserting that she has never been arrested anywhere in the world, and a good conduct certificate from the City of New York police department finding no criminal record. Consequently, on appeal, the petitioner has established her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The petitioner has not overcome all of the director's grounds for denial. While, on appeal, the petitioner has established her good moral character, she has not demonstrated by a preponderance of the evidence that she resided with her U.S. citizen spouse during their marriage, and that she entered into their marriage in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.