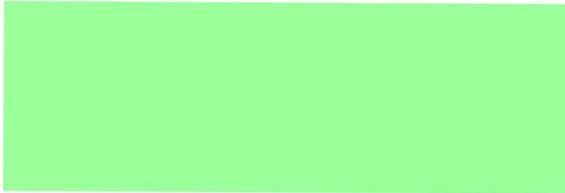


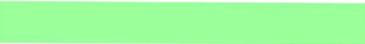


U.S. Citizenship  
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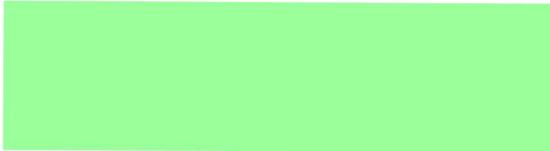


Date: **DEC 16 2014** Office: VERMONT SERVICE CENTER File: 

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:

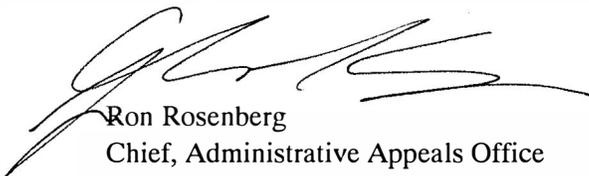


INSTRUCTIONS:

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 Vermont Service Center acting 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 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 former spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her former husband in good faith.

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:

(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.

\* \* \*

(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 China who states that she first entered the United States as a nonimmigrant visitor on October 18, 2010. The petitioner married J-H-<sup>1</sup>, a U.S. citizen on May [REDACTED], in the [REDACTED]. The petitioner filed the instant Form I-360 self-petition on July 16, 2012. The director subsequently issued a request for additional evidence of, among other things, her good faith entry into marriage with J-H-. The petitioner timely responded with further evidence which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner, through counsel, timely appealed.

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into the marriage. The photographs show that the petitioner and J-H- were pictured together at their wedding celebration. However, without probative testimony, the photographs alone are insufficient to establish that the petitioner married J-H- in good faith. In her first affidavit, the petitioner recounted that she met J-H- not long after she first arrived in Saipan.. The petitioner stated that they were friends at first which developed into something more. The petitioner did not provide further description of how she met J-H-, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. In her second affidavit, the petitioner recounted that J-H- first asked her out in March of 2011 and they slowly began dating by going to the supermarket, the beach, and taking walks. She stated that they moved in together in April of 2011 and she also met J-H-'s mother at this time. The petitioner recounted that on the same day that she met his mother, J-H- proposed marriage. The petitioner described not quite feeling ready for marriage but that J-H- convinced her and they got married on May [REDACTED]. The remainder of the petitioner's affidavit

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

again focused on the abuse and she did not add any substantive information about her marital relationship. In their statements, the petitioner's friends claimed to have known the petitioner and J-H- as a married couple but none discussed their interactions with the couple in any probative detail or otherwise established their personal knowledge of the relationship.

A review of U.S. Citizenship and Immigration Services and public records show that J-H- was arrested on March 8, 2011, detained by the Department of Corrections, charged with theft and released approximately one month later on April 6, 2011. It is during this time that the petitioner claimed she began a relationship with, moved in with, and became engaged to J-H-. In her affidavits submitted below, the petitioner did not describe how her relationship with J-H- could have developed in this manner given his incarceration.

On appeal, counsel asserts that the petitioner married J-H- after spending "enough time with him to be able to know him and his family well" but does not address the deficiencies of the record. In her affidavit on appeal, the petitioner states that after meeting J-H- in February of 2011, they began dating and going out frequently. She states that J-H- spent a lot of time in her apartment and then they moved in together "around April of 2011." She does not add substantive information regarding her good faith intentions in marrying J-H- or address his time in jail during their courtship. Accordingly, the petitioner has not established by a preponderance of the evidence that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

On appeal, the petitioner has not established that she entered into marriage with J-H- in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also 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.