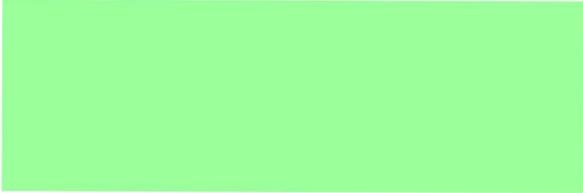
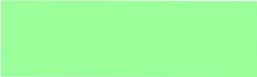


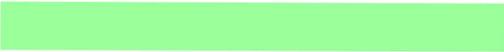


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 23 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 (“acting 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 acting director denied the petition for failure to establish that the petitioner resided with her husband during their marriage and that she married him in good faith. On appeal, the petitioner 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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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 explained in 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.

* * *

(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 Kenya who entered the United States on September 13, 2006, as a nonimmigrant visitor. The petitioner married T-B-¹, a U.S. citizen, on October [REDACTED] in [REDACTED] Missouri. The petitioner filed the instant Form I-360 self-petition on October 7, 2013. The acting director subsequently issued a Notice of Intent to Deny (NOID). The petitioner timely responded to the NOID 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. A full review of the record fails to establish the petitioner's eligibility. The evidence does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Joint Residence

The petitioner indicated on the Form I-360 self-petition that she resided with her husband, T-B-, from August 2009 until September 2011, and that the last address at which they lived together was on [REDACTED] Kansas. In the petitioner's initial affidavit, dated September 26, 2013, she did not address the couple's joint residence aside from stating that T-B- moved out at the end of August 2011. In response to the NOID, the petitioner submitted an additional affidavit, dated November 26, 2013, as well as her May 4, 2013 affidavit that was submitted with her previous Form I-360 self-petition.² However, neither of these affidavits addressed living with her husband. As such, the petitioner failed to provide any probative details of joint residency with T-B-. For example, she did not identify the dates and addresses of when and where she lived with T-B-. She also failed to describe in probative detail the couple's residence(s), their shared belongings, or provide any other substantive information regarding living with T-B- during their marriage. Statements from the petitioner's friends [REDACTED] briefly referred to visiting the couple "in their [home] and at [REDACTED]" respectively. Neither statement described any particular visit, specific interaction, or social occasion with the couple at their apartment(s) or otherwise addressed the couple's joint residence in detail.

The record contains a copy of a lease for May 1, 2011, through December 31, 2011, as well as a letter from [REDACTED], the property manager of the apartment complex on [REDACTED]. In her letter, Ms. [REDACTED] asserted that she knows that the petitioner and T-B- resided at the apartment together prior to May 1st, but "cannot advise how long [they] were residing at the above address." Although she further referenced "mistakes, missing documents, and information," on the part of prior on-site staff, she did not describe any specific mistake or missing document or information as it relates to the petitioner. Similarly, a letter from [REDACTED] the assistant property manager, stated that the couple resided at the apartment complex beginning on January 1, 2009, not January 1, 2011, as had been incorrectly asserted by the former management company in a previous letter. However, neither Ms. [REDACTED] nor Mr. [REDACTED] described their own personal knowledge of the couple living together aside from the lease and there is no assertion that any other apartment complex employee knew the couple or personally observed their joint residence such that they have personal knowledge that the couple actually resided together in the apartment. There is no other relevant evidence in the record. The record lacks detailed and probative information regarding the petitioner's claimed residence with her husband during their marriage. Consequently, the preponderance of the 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.

Entry into the Marriage in Good Faith

In her initial statement, the petitioner stated only that she married T-B- in October 2009, that they loved each other, and had a good time with their children. In response to the NOID, the petitioner briefly reiterated that they had a good relationship and a good life until T-B- changed. The petitioner did not

² The petitioner's previous Form I-360 self-petition [REDACTED] was denied by the acting director on August 6, 2013.

describe in probative detail how she met T-B-, the couple's courtship, wedding ceremony, shared residence, and experiences apart from the claimed abuse. The statement from Mr. [REDACTED] stated that he got to know the couple in February 2010, more than three months after the petitioner and T-B- married and, therefore, Mr. [REDACTED] had no personal knowledge of the petitioner's marital intentions. He provides no further probative details to establish that the petitioner married T-B- in good faith. Similarly, the statement from Mr. [REDACTED] only briefly recounted that the petitioner and T-B- are a loving couple who have been married since [REDACTED]. As such, he did not describe any specific contact with the petitioner and T-B-, any particular visit or social occasion with the couple, or any interactions with the couple that would establish his personal knowledge of the relationship. Aside from photographs that are unidentified and dated the day after the couple's wedding, there is no other relevant evidence in the record that addresses the petitioner's marital intentions. Accordingly, the petitioner has failed to establish by a preponderance of the relevant evidence that she entered into marriage with T-B- 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 by a preponderance of the evidence that she resided with her husband during their marriage and that she married him in good faith. 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.