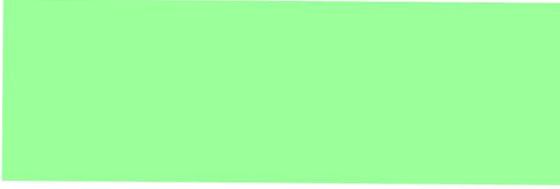




U.S. Citizenship  
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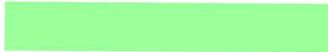


Date: **FEB 19 2014**

Office: VERMONT SERVICE CENTER



IN RE: 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 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 under 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner resided with her abusive spouse, entered into her marriage in good faith, and was subjected to battery or extreme cruelty by her husband during their marriage. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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.

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

\* \* \*

(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)(B)(ii) of the Act are 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.

*Facts and Procedural History*

The petitioner, a citizen of Morocco, married R-M-<sup>1</sup>, a United States citizen, on October 19, 2009, in Jersey City, New Jersey. She entered the United States on February 10, 2001 on a K-1 nonimmigrant visa. The petitioner filed the instant Form I-360 on December 8, 2010. The director subsequently issued a Request for Evidence (RFE) of the requisite residence, battery or extreme cruelty, and entry into marriage with R-M- in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Joint Residence*

The director correctly determined that the petitioner failed to establish that she jointly resided with her husband. On the Form I-360, the petitioner stated that she lived with R-M- from October 19, [REDACTED]. The record contains the petitioner's affidavit, affidavits from friends, a one page lease, a letter from the petitioner's landlord, and photographs. The undated and unlabeled photographs show only that the petitioner and R-M- were pictured together and do not demonstrate a shared marital residence. The one page lease dated November 1, 2009 lists the petitioner and R-M- as tenants but only contains what appears to be the petitioner's signature and the landlord's signature. As such, little evidentiary weight can be given to the lease. Further, the brief letter from the landlord is insufficient to establish that the petitioner and R-M- resided together after their marriage.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's residence with an abusive spouse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." 8 C.F.R. § 204.2(c)(2)(iii). In her affidavit, the petitioner stated that later on the same day as their wedding, she and R-M- moved his belongings to her home. She stated that the first few months were incredible and lists the activities that the two did together including visiting friends and family, grocery shopping, and going out to museums. She did not, however, describe their shared belongings and residential routines, or provide any other substantive information sufficient to demonstrate that she resided with R-M- after their marriage.

Additionally, the letters from the petitioner's friends did not provide probative details regarding the marital residence to overcome the lack of traditional forms of joint documentation. The petitioner submitted affidavits from [REDACTED]. They claimed to know that the petitioner was married to R-M- and resided with him, but their affidavits did not

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

contain probative information about the petitioner's shared residence with R-M- or describe any particular visit in detail. On appeal, counsel submits a brief and evidence already submitted in response to the RFE. Counsel argues that director ignored the petitioner's evidence which establishes that she resided with R-M- but fails to address the deficiencies of those documents. Counsel also fails to address the inconsistent dates of shared residence. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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

The director further correctly determined that the petitioner failed to establish that she married R-M- in good faith. The relevant evidence on the record contains: the petitioner's affidavit; photographs of the petitioner and R-M- on their wedding day and various other unidentified occasions; affidavits from [REDACTED] a copy of a lease; and a letter from the petitioner's landlord. The lease and letter from the landlord are dated after the two were married and as such, have little probative value in demonstrating that the petitioner entered into her marriage in good faith. Further, the landlord's letter is brief and does not contain any probative details that establish the petitioner's good-faith intentions in marrying R-M-. The photographs, which showed only that the petitioner and R-M- were pictured together, also do not establish the petitioner's marital intentions.

Nonetheless, 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the affidavit of the petitioner and the affidavits from her friends do not provide sufficient, probative information to establish her good-faith intent upon marrying R-M-. In her affidavit, the petitioner stated that she met R-M- in January of 2009 when they were both shopping in New York City, New York. She stated that she was taking a coffee break from the restaurant where she worked at the time and R-M- was smoking a cigarette nearby. She stated that they began talking about the weather and that R-M- asked her for her phone number. She further recounted that they went on their first date later that week, had a wonderful time, and from that moment on, were in a "committed, serious relationship." The petitioner then stated that throughout the summer of 2009, R-M- brought her flowers at work and the two were inseparable. She stated that he proposed to her in September of 2009. Although the petitioner gave details about the proposal, she did not describe in further probative detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. She briefly listed visiting friends, visiting his family and going to museums, but did not provide substantive information about these activities that would demonstrate her good-faith marital intentions.

In her affidavit, [REDACTED] stated that she first met R-M- in February through the petitioner and regularly saw them as a couple at least once a week. However, she did not describe any particular visit or social occasion in probative detail. [REDACTED] stated that he met the petitioner in March of

2010 when he arrived at her home to fix her wireless internet service. He stated that R-M- came into the living room and began screaming at the petitioner. [REDACTED] stated that he could tell that R-M- was the petitioner's husband based on the way R-M- was speaking to her. His summary of this single incident is insufficient to demonstrate that the petitioner married R-M- in good faith. [REDACTED] described conversations that she had with the petitioner about R-M- and the claimed abuse but did not otherwise establish her personal knowledge of the relationship.

On appeal, counsel asserts that the petitioner submitted sufficient evidence, including her own affidavit and three affidavits from friends who attested to her genuine marriage but again fails to address the deficiencies of the record. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Battery or Extreme Cruelty*

We further find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the brief and evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavit, affidavits from friends, and two letters from [REDACTED]. In his letter dated December 18, 2010, [REDACTED] stated that the petitioner was diagnosed with a panic attack in March of 2010 and had returned with a "worsening condition of panic attack." He prescribed Xanax and Lexapro but did not state the cause of the panic attacks or attribute the petitioner's medical condition to R-M-'s treatment of her. In his second letter dated October 21, 2011, [REDACTED] stated that due to the petitioner's exposure to spousal abuse and abandonment, she developed "post traumatic stress, anxiety and depression." While we do not question his professional expertise, [REDACTED] letter did not provide any substantive information regarding the claimed abuse and does not establish that the petitioner's husband ever subjected her to battery or extreme cruelty during their marriage.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In her affidavit, the petitioner stated that the first few months of her marriage to R-M- were wonderful but that everything changed in January of 2010 after he "submitted immigration papers on [her] behalf." She stated that he became controlling and demanding, called her names, and became violent when she refused to have sex with him. The petitioner stated that in February of 2010, R-M- returned home one night and threatened to hit her. She then recounted a moment in March of 2010 when R-M- demanded that she have sex with him and became violently angry when she refused. The petitioner also stated that in March, R-M- screamed at her in front of the [REDACTED] repairman and again tried to force her to have sex in April of 2010. She did not provide further substantive information about these claimed incidents of abuse or provide any other probative details about R-M-'s treatment of her.

[REDACTED] stated that in February of 2010, she noticed that the petitioner was not her normal friendly self and decided to give her space. She stated that she did not hear from the petitioner again until mid-April when the petitioner left R-M- due to his abusive treatment of her. [REDACTED] stated that as a coworker, she observed the petitioner come to work upset about her

troubled relationship with her husband. [REDACTED] stated that the petitioner relayed that R-M- was threatening to hurt her and forbade her from sending money to her family in Morocco. The petitioner's friends did not describe witnessing specific incidents of abuse or otherwise establish their knowledge of such abuse. [REDACTED] stated that he met the petitioner in March of 2010 when he was assigned to repair the wireless internet service at her residence. [REDACTED] stated that he witnessed someone that he assumed was the petitioner's husband scream at her and call her derogatory names. He stated that he did not hear from the petitioner again until October of 2011 when she contacted him to see if he was willing to help her. [REDACTED] brief description of the actions of the petitioner's husband does not establish that the petitioner was subjected to extreme cruelty.

On appeal, counsel asserts that the petitioner submitted "ample evidence" of R-M-'s cruelty that the director chose to ignore but fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's husband constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Counsel also submits background materials related to domestic violence for Moroccan women and a medical prescription for Lexapro dated November 24, 2012. The background materials pertain to country conditions information in Morocco and do not demonstrate that the petitioner was abused by R-M- and the medicine prescription shows only that the petitioner was prescribed Lexapro. Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Conclusion*

The petitioner has not overcome the director's grounds for denial on appeal. She has not demonstrated that she resided with her husband, was subjected to battery or extreme cruelty by him, and that she entered into marriage with him in good faith. Accordingly, the petitioner is 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons, with each considered an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.