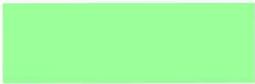


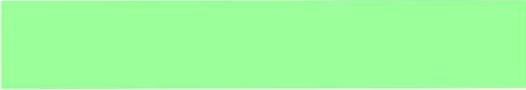


U.S. Citizenship  
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Services

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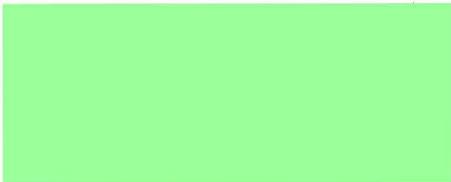


Date: **JUL 08 2014** Office: VERMONT SERVICE CENTER FILE: 

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)

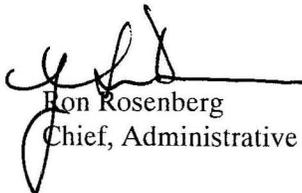
ON BEHALF OF PETITIONER:



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 and the petition will remain denied.

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 on the basis of her determination that the petitioner had failed to establish that she married her husband in good faith, resided with him, and that he subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and new evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(A)(iii) 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:

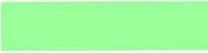
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight 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.

\* \* \*

(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)(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:

*Evidence for a spousal self-petition –*

(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 is a citizen of Jamaica who entered the United States on July 6, 2005 as a nonimmigrant visitor. The petitioner married her husband, a U.S. citizen, on April 22, 2010, in Florida. The petitioner's husband filed an alien relative petition (Form I-130) on the petitioner's behalf in June 2010 and the petitioner submitted an application to adjust status (Form I-485) the same month. The Form I-130 was denied based upon its withdrawal by the petitioner's husband and the Form I-485 was also denied. The petitioner's husband filed a second Form I-130 and the petitioner concurrently filed a second Form I-485 in March 2011, both of which were denied in July 2011. The petitioner filed the instant Form I-360 on May 18, 2012. The director subsequently issued a request for additional evidence (RFE) of the petitioner's good-faith entry into the marriage, that she and her husband resided together and that he subjected her to battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition accordingly. On appeal, counsel submits a brief and a copy of a civil action summons for a support hearing.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility for the following reasons.

### *Joint Residence*

On the Form I-360, the petitioner claimed that she last lived with her husband on [REDACTED] in Florida, and that they resided together from April 2010 until June 2011. The record contains the follow evidence relevant to the petitioner's claim that she lived with her spouse:

- Petitioner's affidavit, dated November 25, 2013, stating that she and spouse began living together in April 2010 at the [REDACTED] address and that prior to April 2010, she had been living with her sister in [REDACTED] Florida since July 2005;
- Biographic Information Sheet (Form G-325A) submitted along with the petitioner's first Form I-485 filed in conjunction with the first Form I-130, indicating that she lived at the [REDACTED] address beginning in April 2010;
- Petitioner's affidavit, dated April 19, 2012, stating that she moved in with her husband prior to getting pregnant in August 2009;
- [REDACTED] affidavit, dated April 19, 2012, stating that soon after the petitioner met her husband in the summer of 2009, she moved in with him;
- A second Form G-325A submitted along with the second Form I-485, indicating that the petitioner lived at the [REDACTED] address from September 2009 until February

2010, and then moved to [REDACTED] Florida in February 2010 where she remained living until February 2011; and

- Petitioner's sworn statement, November 15, 2010, taken by a U.S. Citizenship and Immigration Services (USCIS) officer during an interview regarding the first Form I-130/Form I-485 in which the petitioner indicated that she was currently living with her sister and had never lived with her husband.

On appeal, the petitioner does not specifically address the evidence of her joint residence with her spouse other than to allege impropriety by the interviewing USCIS officer during the November 15, 2010 interview where the petitioner executed a sworn statement that she had never lived with her spouse. The petitioner has not on appeal explained why she and Ms. [REDACTED] stated in their April 2012 affidavits that the petitioner resided with her spouse as early as August 2009, when the petitioner also asserted in response to the director's RFE that she lived with her sister in [REDACTED] Florida from July 2005 until April 2010.

Even without a discrepancy in dates when the petitioner and her spouse's joint residence began, the evidence does not establish a shared residence during the marriage because the petitioner does not describe her and her husband's home or shared residential routines in any detail, and the affidavits from her friends also do not talk about the couple's marital residence in any detail. Although the record contains a copy of the joint tax return that the petitioner and her spouse filed for the 2010 tax year, as well as bank account statements addressed to the couple at the [REDACTED] address, this evidence is insufficient to establish a marital joint residence in light of the petitioner's contradictory statements about when she and her husband began living together and her failure to describe her marital home and routines in any probative way. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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

The relevant evidence submitted below and on appeal also fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavit dated April 19, 2012, the petitioner stated that she met her husband at his brother's apartment. She reported that she moved in with him and that in the beginning he was charming, friendly and likeable. She indicated that she got pregnant and her husband wanted her to have an abortion, which she did. The petitioner stated that they were married on April 22, 2010. The petitioner briefly noted that she and her husband went out sometimes. The petitioner did not describe in probative detail how she met her husband, their courtship, engagement, wedding, or any of their shared experiences, aside from the alleged abuse.

The petitioner submitted affidavits from friends and a relative. The petitioner's cousin, Ms. [REDACTED], indicated that the petitioner fell in love with her husband and was happy at first. [REDACTED] stated that the petitioner told him how she met her husband, how they were married, how he was happy about her marriage, and how it suddenly changed. [REDACTED] indicated that he knew how much the petitioner loved her husband, but does not explain the basis for this knowledge. [REDACTED] the

petitioner's brother-in-law, stated that his brother was very happy since meeting the petitioner and that the petitioner was truly in love with his brother, but does not explain the basis for this knowledge. These affidavits do not describe the affiants' observations in probative detail or provide any other substantive information regarding the petitioner's interactions and relationship with her spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married her husband in good faith.

The petitioner also submitted photographs of herself and her husband at what appears to be their wedding and on four other occasions. The petitioner filed her 2010 income tax forms as "married." She submitted [REDACTED] bank statements for an account under her and her husband's name, but there is insufficient information to indicate that both she and her husband used the account, and the account often reflected a negative or very low balance. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. Furthermore, in her sworn statement taken at the November 10, 2010 interview regarding the first Form I-130/Form I-485, the petitioner stated that she married her husband to obtain her "green card" so that she could remain in the United States, and that their marriage was never consummated.

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(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." 8 C.F.R. § 204(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith. In her affidavits, the petitioner briefly describes meeting her husband and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the affidavits from friends and her cousin are general and do not discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. When viewed in the aggregate, the relevant evidence submitted below and on appeal does not demonstrate, by a preponderance of the evidence, 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.

On appeal, the petitioner, through counsel, alleges impropriety by the interviewing USCIS officer during the November 15, 2010 interview, and the petitioner submits a copy of a civil action summons for a support hearing in the State of New Jersey in March 2014. The summons is not proof that the petitioner is the father of the petitioner's daughter as the court has not yet made any findings as to the petitioner's husband's paternity or responsibility to pay child support. Additionally, the petitioner's husband is not listed as the father on her daughter's birth certificate. Even without taking the sworn statement into consideration, the evidence submitted below and on appeal is insufficient to establish that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Battery or Extreme Cruelty*

On appeal, the petitioner does not address the director's determinations regarding her claim to having been subjected to battery or extreme cruelty during her marriage. She has, therefore, failed to overcome this ground of ineligibility cited in the director's decision. 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*

On appeal, the petitioner has not established that she entered into the marriage in good faith, resided with her husband, or that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.