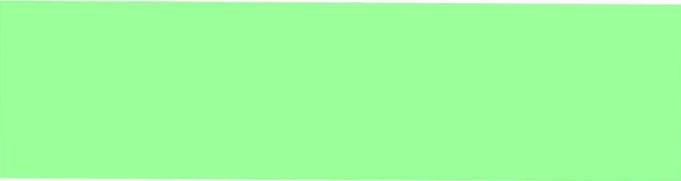
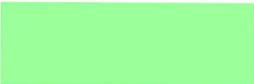


(b)(6)



U.S. Citizenship
and Immigration
Services



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:

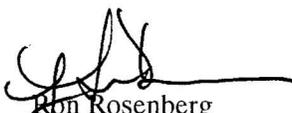


INSTRUCTIONS:

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 for failure to establish that the petitioner resided with her former husband and entered into their marriage in good faith.

On appeal, counsel submits additional evidence.

Applicable Law

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

* * *

(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.

* * *

(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 Mexico who entered the United States on November 22, 2008, with a fiancée visa. The petitioner married her U.S. citizen fiancé on December 31, 2008 in California. The petitioner and former husband were divorced on March 22, 2011. The petitioner filed the instant Form I-360 on November 14, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, shared residence, and her former husband's battery or extreme cruelty. The petitioner failed to timely respond and the director found the evidence in the record insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits an additional affidavit from the petitioner, affidavits from the petitioner's friends and acquaintances, and a psychological evaluation and letter.

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, including the documents submitted on appeal, fails to establish

the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith and Joint Residence

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith or that she resided with her former husband. In her affidavit, dated November 3, 2011, the petitioner recalled that she met her former husband in Mexico at a wedding they both attended. The petitioner stated that she and her former husband talked the entire night, and that afterwards they spoke on the telephone every day. The petitioner recounted that her former husband came to visit her every weekend for two years. She indicated that her former husband was a gentleman and treated her well. They were engaged and the petitioner was happy when the K-1 fiancée petition that her former husband filed on her behalf was approved. The petitioner stated that she loved her former husband and that they were married in a simple ceremony on December 31, 2008. The petitioner did not describe in probative detail how she met her husband, their courtship, engagement, wedding, or any of their shared experiences. Similarly, the petitioner did not describe their home or shared residential routines in any detail. The director correctly concluded that this evidence was insufficient to demonstrate that the petitioner married her husband in good faith and resided with him.

The petitioner also submitted statements from friends attesting to the abuse the petitioner suffered and her good moral character, but the statements did not provide any substantive information regarding the affiants' observations of the petitioner's interactions and relationship with her former husband prior to and during their marriage, nor did they describe any visits to the petitioner and her former husband's claimed joint residence. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her former husband in good faith or resided with him.

On appeal, the petitioner submits an affidavit in which she repeats much of her first affidavit, and adds that her former husband sent her money and that they visited each other while she was still in Mexico. She indicates that she entered into the relationship in good faith and with the intention of being together because they were in love. They purchased two simple wedding bands on the day they were married, and her mother-in-law was the only witness. She also states that she moved in with her former husband's sister for two weeks before moving in with her former husband's mother, where she believes they paid \$1000 monthly in rent. The petitioner also submits letters from other individuals. In her letter, [REDACTED] the notary that her former husband used to help him file her fiancée petition, states that the petitioner was depressed when she and her husband separated because she was really in love with him. [REDACTED] state that the petitioner's former husband visited her while she was in Mexico and sent her money and gifts. Again, none of these affiants provide probative details of how the petitioner met her former husband, their courtship, engagement, wedding, joint residence or any of their shared experiences, nor do they describe their observations of the petitioner's interactions with or feelings for her former husband during their courtship or marriage. Further, none of these individuals mention that the petitioner lived with her former husband or refer to their joint residence. The psychological evaluation and letter from Dr. [REDACTED] discuss the petitioner's reactions to the abuse she suffered, but do not

discuss the petitioner's intentions in entering into the marriage or her joint residence with her former husband.

Although on appeal the petitioner explains that she lived with her former husband's mother and was not working, she has not submitted sufficient testimonial evidence to meet her burden of proof that she resided with and entered into her marriage with her former husband in good faith. 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, the testimonial evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith or that she shared a joint residence with her former husband. The petitioner has submitted no probative, detailed account of her intentions in marrying her former husband and their relationship or joint residence. The petitioner's and affiants' brief statements are insufficient to sustain the petitioner's burden of proof in this matter. When viewed in the aggregate, the relevant evidence fails to overcome these two grounds for denial of the petition. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former husband in good faith or that she shared a residence with him, as required by sections 204(a)(1)(A)(iii)(I)(aa) and (II)(dd) of the Act.

Conclusion

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.