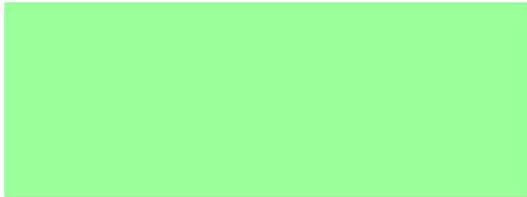


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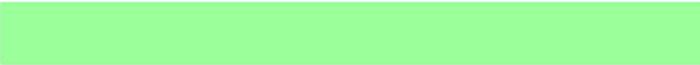


U.S. Citizenship
and Immigration
Services



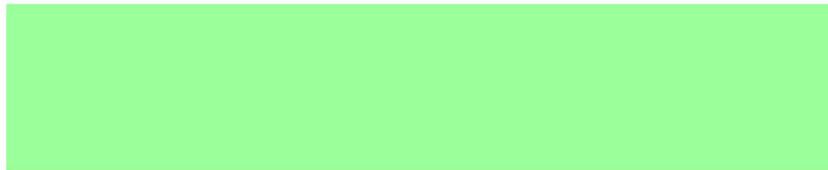
Date: **JUL 16 2014**

Office: VERMONT SERVICE CENTER File: 

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:

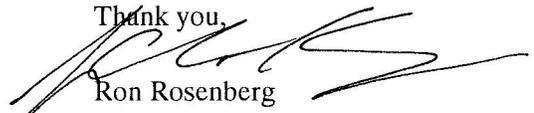


INSTRUCTIONS:

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 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 a United States citizen.

Applicable Law

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 states, in pertinent part:

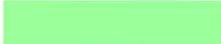
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight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

The eligibility requirements are explained further 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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the



commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and

submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 was born in Jamaica and entered the United States as a B-2 nonimmigrant visitor on February 18, 2009. She married her spouse, a U.S. citizen, on February 8, 2011. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on February 15, 2013. The director denied the petition for failure to establish that the petitioner resided with her spouse and entered into her marriage in good faith. The petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, demonstrates that the petitioner married her spouse in good faith, but fails to establish the petitioner's eligibility on other grounds

Good-Faith Entry into Marriage

In her first affidavit, the petitioner recounted in detail how she met her husband at a family member's New Year's Eve party in 2010. She described their courtship, how they received financial support and how they grew close because of their similar childhood experiences. She referenced their long-term plans and described their shared experiences, such as his enjoyment of her cooked meals. In her second affidavit, the petitioner briefly described the changes she saw in her spouse, asserting that while her husband had been a good boyfriend, he became a different person when they married. The petitioner also provided the affidavits of her cousins, photographs of her with her spouse, and her husband's lease and letter explaining how she moved in with him after he entered the lease and that they could not open a joint bank account due to his outstanding debt. The petitioner also explained that she could not provide additional evidence of joint accounts because her spouse had poor credit.

The director determined the petitioner had not established that she entered into marriage with her spouse in good faith. Specifically, the director noted that the photographs she submitted appeared to have been taken over a few days, and the affidavits did not provide sufficient information to establish

that she entered the marriage in good faith. On appeal, the petitioner provides a new affidavit describing her courtship, the hours of conversations with her husband, the shared traditions they developed as a couple, their discussions regarding having children and how she became closer to her husband when he comforted her after her grandfather's death. The petitioner explains that she cannot provide evidence of mingled assets because she initially had no social security number that would have allowed her to be included on his accounts, and because her spouse had financial and credit woes. She also explains why she does not have more photographs of herself and her husband given their dislike of taking pictures. The petitioner credibly recounts her intentions at the time she married the petitioner and how she remained committed to the marriage until she finally left him because of the abuse. Accordingly, the petitioner has established by a preponderance of the evidence that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act and the director's contrary determination shall be withdrawn.

Joint Residence

Nonetheless, the petitioner has not overcome the director's remaining ground for denial. The relevant evidence submitted below and on appeal fails to demonstrate the petitioner resided with her spouse. On the Form I-360, the petitioner stated that she resided with her spouse from February 2010 until June 2012, and that their last joint address was an apartment in [REDACTED] South Carolina. On her Form G-325, Biographic Information, which the petitioner submitted with her Form I-485, Application to Adjust Status and concurrently filed with this Form I-360, the petitioner stated that she resided with her spouse at the Hanahan address from February 2010 until June of 2012.

In her initial affidavit, the petitioner explained that after she met her spouse in 2010, she would travel back and forth from New York to [REDACTED] South Carolina and would spend time with him when she came to [REDACTED]. She indicated that she moved in with him at his apartment in [REDACTED] in January, but did not specify the year. She stated that she married her spouse in February of 2011 and continued to reside with him until she moved to Maryland in June of 2012. The petitioner did not describe their apartment, shared belongings, residential routines or otherwise provide any substantive information regarding their marital residence.

The petitioner also submitted affidavits from family members who asserted that they knew the petitioner resided with her spouse. Her cousin from Sumter stated that he had to pick the petitioner up when she and her spouse had fights. Another cousin in Maryland described prior telephone conversations with the petitioner and stated that the petitioner is now living with her. The letters did not state the petitioner's marital address or describe her joint residence with her spouse.

In response to the request for evidence (RFE), the petitioner provided a second affidavit in which she stated that she married and "share[d] a bed" with her spouse. She explained that they were unable to open an account together because of his bad credit, but that she provided him access to her account. She provided affidavits from her aunt and uncle in New York, who briefly discussed her marriage, but also did not state the petitioner's marital address or describe her joint residence with her spouse.

The relevant documents previously submitted also did not establish her marital residence. The petitioner initially submitted an invoice for her spouse's 2010 Internal Revenue Service (IRS) Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, which lists his mailing address in [REDACTED] on February 1, 2011. This date falls during the period that the petitioner claims she resided with her spouse; however, his [REDACTED] address does not match the [REDACTED] address she claimed had been her spouse's residence since 2009, and their joint residence from February 2010 through June 2012. The petitioner provided copies of various notices from U.S. Citizenship and Immigration Services (USCIS) and related mailing receipts dated between April 2011 and May 2012, but many of these reflect her address as her cousin's home in Sumter rather than the [REDACTED] address she claimed to have shared with her spouse during the same period.

The petitioner also submitted the following relevant documents below: a copy of the 2011 lease agreement for the [REDACTED] apartment which lists only her spouse and shows his initial date of occupancy as April 24, 2009; her marriage certificate; her January 23, 2012 application for an identification Card; and her South Carolina identification card issued on January 23, 2012, all of which reflect the address of the [REDACTED] apartment, but only the marriage certificate lists this address as belonging to both the petitioner and her spouse. The petitioner also provided an unnotarized letter dated February 21, 2012 that bears both of their names but which she stated was written by her spouse. In the letter, he asserted that they resided together but only his name was on the lease because he had occupied the apartment since 2009.

The petitioner also initially submitted undated, unlabeled photographs showing her with her spouse, which do not include a view of the marital residence. In response to the RFE, the petitioner submitted photographs with handwritten notes. One photograph is a close up of the petitioner and her spouse and is listed as having been taken in the parking lot for the [REDACTED] address, another is of her spouse and is listed as having been taken at "Home in our room." Neither photograph includes a view of the claimed marital address.

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with her spouse. On appeal, the petitioner submits a third affidavit, asserting that she resided with her spouse at the [REDACTED] address. The petitioner claims that she and her spouse courted for over a year before marriage, and that she lived with him from January 2011 to June 2012 as "husband and wife." This claim contradicts her initial statement and Form G-325 on which she stated that she lived with him from February 2010 to June 2012. The petitioner explains that she cannot provide more documentation to establish that she resided with her spouse because she had no social security number and could not be included in his accounts, and because her spouse had financial problems. The petitioner reasserts that she resided with her spouse at the same address where the abuse occurred.

On appeal, the petitioner also provides new affidavits from her relatives. The cousin who lived in Sumter briefly asserts that the petitioner and her husband lived together and that he picked her up from the [REDACTED] address when she and her spouse had fights. Another cousin in Maryland attests that she was aware that the petitioner resided with her spouse at the [REDACTED] address because she

“would send her money to help them out,” although she had not retained any receipts of the transactions. Neither cousin describes any actual visit they made into the petitioner’s marital residence. She also submits a bank statement for the three-month period ending on December 8, 2011, which reflects the claimed joint residence but was under her maiden name and reflects a balance of 54 cents with no activity on the account.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “affidavits or any other type of relevant credible evidence of residency may be submitted.” 8 C.F.R. § 204.2(c)(2)(i). In this case, however, the documents and affidavits submitted by the petitioner are inconsistent and detract from the credibility of her claimed joint residence with her spouse. The petitioner first claimed to have lived with her spouse from February 2010 to June 2012, but asserts on appeal that she lived with him from January 2011 to June 2012. Several of the documents dated during the period the petitioner claimed to be residing with her husband in [REDACTED] are addressed to either her or her husband individually at other addresses in different cities. In addition to these inconsistencies, the affidavits of the petitioner and her relatives lack any substantive description of the petitioner’s residence with her husband. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

As an additional matter, the petitioner has not established her good moral character.¹ Primary evidence of a self-petitioner’s good moral character is his or her affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner’s residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v).

The petitioner provided an affidavit in which she asserted she is a person of good moral character and has no criminal record. She also provided a police clearance for Maryland, the state in which she currently resides. However, the petitioner stated that she lived in South Carolina for over two years during the three years preceding the filing of this petition. The petitioner failed to provide the required clearances or background check from South Carolina for this period. Accordingly, the petitioner has not established by a preponderance of the evidence that she has good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

Conclusion

On appeal, the petitioner has demonstrated that she married her spouse in good faith, but has not established that she resided with him during their marriage.. The petitioner also has not established her good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.