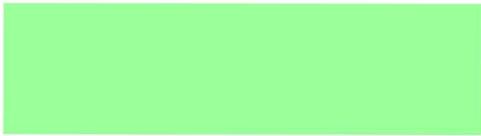


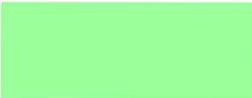


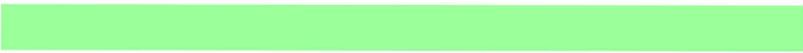
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 28 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:

SELF-REPRESENTED

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.

(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 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.

(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.

Pertinent Facts and Procedural History

The petitioner was born in [REDACTED] and first entered the United States on August 11, 2003, as a B-2 nonimmigrant visitor. She married her spouse, a U.S. citizen, on June 22, 2005 in New York City. The petitioner was paroled into the United States on September 5, 2006. She filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on October 3, 2011. The director subsequently issued two Requests for Evidence (RFE) that, among other things, the petitioner resided with her spouse, was subjected to battery or extreme cruelty by her spouse during their marriage, and entered into her marriage in good faith. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these three grounds. The director denied the petition and 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, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with her spouse. On the Form I-360, the petitioner stated that she resided with her spouse from June 2005 until July 2006, and that their last joint address was an apartment on [REDACTED] New York. The petitioner provided a copy of her certificate of marriage registration, which showed that she and her husband shared an address on [REDACTED] when they were married in June 2005.

In response to the first RFE, the petitioner submitted affidavits from family members and friends. The affidavits are dated December 2012 and described the petitioner's relationship with her husband in the present tense, which is inconsistent with the petitioner's original assertion that she lived with her spouse until July 2006. For example, her stepmother, [REDACTED] stated that she has known the petitioner's spouse for several years, and that she sees the petitioner and her spouse regularly at all family events, at their house, and at her own house. In addition, the petitioner's friend, [REDACTED] is the only one who listed the petitioner's marital address on [REDACTED] yet she also asserted that the petitioner and her spouse "are residing" there and claimed to have visited them frequently. Even apart from this discrepancy in the duration of the petitioner's marital residence, none of the petitioner's friends or relatives describes any particular visit to the petitioner's marital home or otherwise provides any substantive information regarding the petitioner's residence with her husband.

In response to a second RFE, the petitioner provided an affidavit in which she stated that she resided with her spouse at the [REDACTED] apartment in Brooklyn after their marriage. She did not describe the [REDACTED] apartments, their shared belongings and residential routines, or otherwise provide any substantive information regarding their marital residence. The petitioner also provided new affidavits from friends and family, but only her stepmother listed the shared marital

residence on [REDACTED] explaining that she visited the petitioner and her spouse there. In contrast to her earlier statement indicating that the petitioner and her spouse were living happily together as of December 2012, the stepmother indicated that the petitioner had not seen her husband since March of 2006.

On appeal, the petitioner submits billing statements for satellite television and electricity addressed to her and her spouse at the [REDACTED] address from February 2006 to June 2006, and one statement addressed to the petitioner at the [REDACTED] address in May 2005, before she claimed to reside with her spouse. The notices show that the petitioner and her spouse used the [REDACTED] address for television and electricity accounts, but the bills do not overcome the discrepancies in the affidavits of the petitioner's friends and relatives and the lack of any probative description of the claimed marital residence. 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.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner was battered or subjected to extreme cruelty by her spouse. The petitioner did not submit a personal affidavit regarding battery or extreme cruelty with her original submission. In response to the first RFE, the petitioner provided a letter dated May 3, 2012 from a doctor in [REDACTED] who stated that he examined her and that she was the victim of verbal and physical violence by her husband. The doctor does not explain how he determined that the petitioner was abused by her husband or provide any probative information about the abuse. The petitioner provided several affidavits from friends and family which did not discuss any abuse and instead described the petitioner's marriage as happy.

In response to a second RFE, the petitioner provided a personal affidavit. She described several episodes in which her spouse screamed at her and one in which he "flipped out," but no other specific descriptions of his actions. The petitioner provided additional affidavits from friends and family. [REDACTED] each state they once witnessed the petitioner's spouse shouting and calling the petitioner names. [REDACTED] described the petitioner's sadness during her marriage, but did not discuss any battery or extreme cruelty. While [REDACTED] briefly stated she twice saw the petitioner's husband beat her and she told the petitioner "she can't live like this," Ms. [REDACTED] previously submitted an affidavit that described the petitioner's spouse as a wonderful, loved member of the family in a happy marriage with the petitioner. The inconsistency between Ms. [REDACTED] s two statements detracts from their credibility and she did not explain the discrepancy. In addition, the petitioner herself does not discuss any incident of battery or other physical violence.

On appeal, the petitioner briefly states that her husband beat her up and threatened to kill her if she ever called the police, went to a hospital for treatment of injuries, or filed for divorce. She does not further describe the claimed battery and threats or any other specific incidents of battery or extreme cruelty.

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 this case, the statements of the petitioner, her friends, and family submitted below did not discuss her spouse’s behavior in probative detail and do not show that he ever battered her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner’s statement on appeal lacks any description of specific incidents and fails to demonstrate that her spouse subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into Marriage

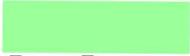
The relevant evidence submitted below and on appeal fails to demonstrate the petitioner’s entry into her marriage in good faith. The petitioner initially provided a certificate of marriage registration. Noting that her spouse had previously filed a Form I-130, Petition for Alien Relative, on her behalf, she asked that the agency “refer to documentation on file in support of good faith marriage.” However, the petitioner’s administrative file shows that the Form I-130 also was accompanied by the certificate of marriage registration, but no documents to establish the petitioner’s good faith entry into marriage.

In response to the second RFE, the petitioner submitted an affidavit in which she briefly described her relationship with her spouse. The petitioner stated that after she met her spouse at her place of work they went out a few times, spoke often on the phone, and eventually married and lived together. The petitioner did not substantively describe her relationship with her former spouse, apart from the claimed abuse. The petitioner submitted one undated photograph of her and her spouse at an unidentified location. In response to the first RFE, she also provided affidavits from friends and family members, who briefly describe the petitioner and her spouse as a “happily married couple,” but do not provide probative accounts of any visit with the former couple or otherwise demonstrate the affiants’ personal knowledge of the relationship.

On appeal, the petitioner states that she suffered a lot because she loved her husband and thought that he would change, but she does not provide probative information such as details of her courtship with her husband, their wedding ceremony, joint residence, and shared experiences. The petitioner provides billing statements for one joint electricity account at the [REDACTED] address dated during the marriage. The bills show that she and her spouse held one joint utility account, but they do not overcome the lack of any probative account of the petitioner’s marital relationship. The petitioner has not 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.

Conclusion

On appeal, the petitioner has not demonstrated that her spouse subjected her to battery or extreme cruelty during the marriage, that she resided with her spouse or 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 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.