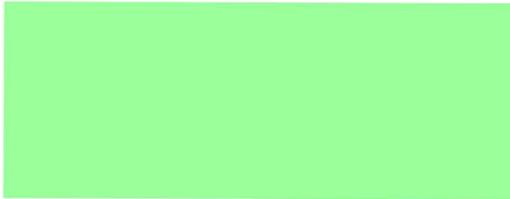


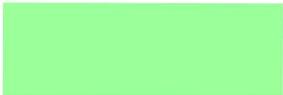
(b)(6)

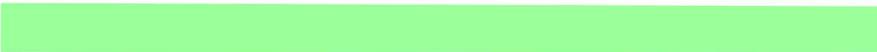


U.S. Citizenship
and Immigration
Services



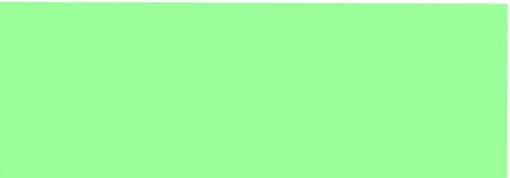
Date: **JUL 29 2014**

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:

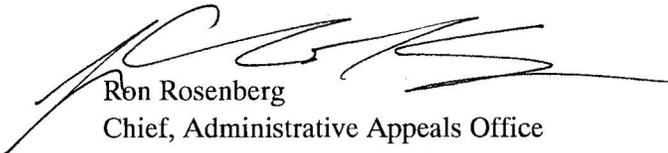


INSTRUCTIONS:

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 husband during their marriage and that the petitioner entered into the marriage in good faith. On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

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 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 explained in 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)(I) of the Act are further explained in 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.

* * *

(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 is a citizen of the Philippines who entered the United States on December 8, 2011, as the K1 fiancé of R-W-¹ a U.S. citizen, who she married on December 27, 2011, in Florida. The petitioner filed the instant Form I-360 on July 25, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residency with R-W- and her marriage to him in good faith. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

We conduct appellate review on a *de novo* basis. 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. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The petitioner stated on her Form I-360 that she resided with R-W- from December 2011 until April 2012, but she did not identify their marital address. In the petitioner's statement, she indicated that after she came to the United States in December 2011, R-W- kept her locked in the house without a telephone. She recounted that she begged him to let her visit her aunt, who had introduced them,

¹ Name withheld to protect the individual's identity.

and he allowed her to go, but when she returned, he threw her personal things at her and told her she was not allowed to stay at his house anymore. She stated that she has been living with her sister ever since.

A letter from the petitioner's aunt indicated that she went with R-W- to the Philippines where he met her niece, the petitioner. The petitioner's aunt described that she was unable to meet her niece at the airport when she arrived in the United States. After three weeks of unreturned phone calls, the petitioner's aunt stated she was very worried and on January 25, 2012, she went to R-W-'s house and saw her niece and R-W-. The petitioner's aunt described that when she tried to drop off her niece after her visit, R-W- had thrown the petitioner's belongings outside of the house, screamed at her, told her she is not going to live there anymore, and threatened to call the police. According to the petitioner's aunt, she called 911 because R-W- refused to give her niece all of her personal belongings, including her passport. The petitioner's aunt did not describe the petitioner's home with R-W- or provide any other information about their shared residence.

On appeal, counsel contends that a single affidavit may be submitted to show joint residence and that in this case, the petitioner's own affidavit and an affidavit from a third party establish joint residence. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. 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." See 8 C.F.R. § 204.2(c)(2)(iii). Nonetheless, in her affidavit, the petitioner failed to provide any probative details of the couple's joint residency aside from describing the abuse she suffered. She did not describe, for example, their house, any shared belongings, or provide any other substantive information regarding her residence with R-W- after their marriage. In addition, her Form I-360 conflicts with her aunt's affidavit and the psychological evaluation. According to the Form I-360, the petitioner lived with R-W- from December 2011 until April 2012. However, according to the petitioner's aunt and what the petitioner reported to the psychologist, the petitioner was thrown out of the house on January 25, 2012. The record contains a report of the 911 call made on January 25, 2012. However, the report described R-W- as the petitioner's boyfriend and does not establish that the petitioner resided in the house with her husband. There is no explanation for why the petitioner claimed on the Form I-360 that she lived with her husband for five months whereas her aunt claimed she lived with R-W- for only several weeks.

The record contains an unresolved inconsistency regarding the duration of the petitioner's claimed residence with R-W-. The affidavits of the petitioner and her aunt also lack detailed and probative information regarding the petitioner's claimed residence with her husband during their marriage. Consequently, the preponderance of the evidence does not demonstrate that the petitioner resided with her husband after their marriage 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 fails to demonstrate the petitioner entered her marriage in good faith. In the petitioner's affidavit, she briefly stated that her aunt introduced her to R-W- "because he was looking for a wife." The petitioner explained that they began corresponding through email and the

telephone, and that their relationship was good and healthy when he visited her in the Philippines in January 2011. The petitioner did not probatively describe in any detail their courtship, wedding ceremony, joint residence, or any of their shared experiences. Although the record contains copies of email messages, most of the email correspondence was written by R-W-, establishing his intent for entering the marriage. Only four emails are from the petitioner and they are too brief to establish the petitioner's intent to enter the marriage in good faith. The letter from the petitioner's aunt explained that after R-W- and the petitioner started communicating by email and telephone, R-W- asked if he could go with her to the Philippines to meet her niece in person. She described how she went to the Philippines with R-W-, that R-W- and the petitioner stayed together in a hotel in Manila, and that he asked the petitioner to marry him. Although the petitioner's aunt provided some details regarding the couple's courtship, she did not provide any probative information about the petitioner's marital intentions.

On appeal, counsel asserts that the director's decision lacks an understanding of the dynamics of domestic violence because abused spouses often do not have the same access to documentation as in marriages where there is no abuse. Quoting the petitioner's affidavit, counsel contends that the petitioner's affidavit, in conjunction with the email correspondence, shows courtship and the couple's intent to live together in a romantic way. Counsel is correct to the extent that 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). 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). Nonetheless, in this case, the petitioner's affidavit discussed generally how the couple got to know each other and failed to substantively discuss her intentions on marriage to R-W-. The petitioner did not recount in detail her courtship, wedding, residence or any shared experiences with R-W-, apart from the abuse. The letter from the petitioner's aunt also failed to provide relevant, substantive information regarding the petitioner's good-faith, marital intentions. When viewed in the totality, the preponderance of the relevant evidence does not establish the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that she resided with her husband after their marriage or that she entered the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.