

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date:  
NOV 05 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:

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Acting 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with her spouse, and married him in good faith.

*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 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:

(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 was born in Uzbekistan, and last entered the United States as a B-2 nonimmigrant visitor on November 6, 2011. The petitioner married T-S-<sup>1</sup>, a U.S. citizen on December [REDACTED]. The petitioner filed the instant Form I-360 on December 3, 2012. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's residence with her husband, and good-faith entry into their marriage. The petitioner responded with additional evidence that the director found insufficient and the director denied the petition on those grounds.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

In her initial affidavit dated July 15, 2013, the petitioner generally stated that she entered into the marriage with T-S- in good faith, but did not provide any probative information about her good-faith marital intent. In her statement dated October 31, 2013, the petitioner indicated that her friend [REDACTED] told her about T-S- and introduced her to T-S-. The petitioner stated that she was lonely and started to talk with T-S-, and that he took her to the Brooklyn Botanic Garden and the New York Aquarium in Brooklyn. The petitioner indicated that they walked every other day and talked on the telephone about their families and their future plans every day. The petitioner recounted that T-S- gave her flowers every time they met and when he proposed to marry she accepted. She stated that on December 6, 2011 they had an Islamic marriage ceremony and T-S-

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<sup>1</sup> Name withheld to protect individual's identity.

gave her \$1,500 as a marriage gift. She identified the two witnesses to her marriage ceremony as [REDACTED]. The petitioner indicated that she cooked and cleaned their house, and she and T-S- would shop together and celebrate religious holidays and family events. She mentioned that almost every week she invited her best friends [REDACTED] to dinner, and that she and T-S- often went to [REDACTED] apartment in [REDACTED] New York. The petitioner stated that in July 2012 she and her husband took trips to the [REDACTED] had barbeques, and sang their favorite Uzbek songs. The petitioner cursorily described a few shared experiences with T-S-, but she did not discuss in probative detail the first time she met T-S-, her courtship and engagement, decision to marry, marriage ceremony, marital residence, joint belongings, dinners she spent with T-S- and their friends, their trips to Pennsylvania, or other shared experiences with T-S-.

In addition to her affidavit and statement, the petitioner provided affidavits from her friends. [REDACTED] indicated that she introduced the petitioner to T-S-, attended their marriage ceremony and wedding celebration, visited the petitioner and T-S- weekly, and was invited to dinner at their apartment. She claimed that they were a “perfect couple and seemed to be very happy.” [REDACTED] stated that she knew the petitioner and T-S- prior to their marriage, attended their marriage ceremony and celebration afterwards, was invited to dinner at their apartment, and went on outdoor trips with the couple. She claimed that at the beginning the couple had an “ongoing strong and happy marital relationship.” The general statements of Ms. [REDACTED] and Ms. [REDACTED] provided no detailed probative information regarding the first time the petitioner met T-S-, her courtship and subsequent engagement, marriage ceremony and celebration, and her good-faith intent in marrying T-S-.

The petitioner submitted photographs of herself and T-S- on her birthday, wedding day, in the summer of 2012, and “at home” in October and November of 2012. The petitioner does not describe the significance of the events of the pictures taken in the summer of 2012 and at their claimed residence.

On appeal, the petitioner asserts that it is a contradiction for the director to find that she demonstrated the requisite abuse and qualifying spousal relationship, but did not demonstrate joint residence and good-faith entry into the marriage with T-S-. The petitioner claims that the requisite abuse cannot be established without sharing a joint residence and entering into the relationship in good faith. The petitioner misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. The same or similar evidence may be submitted to demonstrate, for example, abuse and entry into a good faith marriage, but meeting one eligibility requirement will not necessarily demonstrate the others. In this case, the petitioner claims that her affidavit and statement, the affidavits of her friends, and the psychiatric report provide “significant details” of a good faith marriage and joint residence. However, the petitioner’s affidavit and statement do not describe in probative detail her relationship with T-S-. For example, she does not discuss in detail first meeting with T-S-, their courtship and engagement, wedding celebration, joint residence, or shared belongings and experiences. Likewise, the affidavits from her friends and the psychiatric report lack the detailed, substantive information to establish the petitioner’s relationship with T-S- and good-faith intent. Upon full review of the record, the petitioner has not established by a preponderance of the evidence that she entered into

marriage with T-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Joint Residence*

The record also fails to demonstrate that the petitioner resided with T-S-. On the Form I-360 self-petition, the petitioner stated that she lived with T-S- from November 2011 until November 2012, and that their last joint address was in [REDACTED] New York. In her affidavit, the petitioner did not discuss her joint residence with T-S-. In her statement, the petitioner indicated that she cooked, cleaned the house, washed laundry, she and T-S- went shopping together, and Ms. [REDACTED] and Ms. [REDACTED] often came to their home for dinner, but the petitioner's general statements do not provide a detailed description of her marital residence and her and T-S-'s residential routines, or specific probative information about the dinners they shared with their friends at their home.

In their affidavits, Ms. [REDACTED] and Ms. [REDACTED] provided the specific addresses of the marital residences and claimed that they attended dinners at the petitioner's and T-S-'s apartment. Apart from the abuse, however, the cursory statements of Ms. [REDACTED] and Ms. [REDACTED] did not provide any probative information to establish the petitioner resided with T-S- such as a detailed description of their marital residences, or specific details about the dinners or other social events at the petitioner's and T-S-'s residences.

Additionally, the petitioner submitted photographs of herself and T-S- that are identified as taken "at home" in October and November 2012, but the petitioner did not specify the address of the residence where the pictures were taken. The petitioner also submitted wage records, bank account records, and a credit card invoice addressed solely to herself at an address in [REDACTED] New York, not her claimed marital residence. In addition, only the bank statement for the period November 26 to December 23, 2012 is dated during her marriage to T-S-.

On appeal, the petitioner asserts that the director ignored her explanation of why she does not have joint documentation, and that the submitted psychiatric report and affidavits are more "trustworthy" than joint bills and joint bank accounts. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). A self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." 8 C.F.R. § 204.2(c)(2)(iii). In this case, the petitioner's affidavit and statement provide little probative information to demonstrate a shared residence. Similarly, the affidavits from her friends and her psychiatric evaluation do not describe the claimed residences, dinners, or other social events held there in any detail. When viewed as a whole, the preponderance of the relevant evidence fails to demonstrate that the petitioner and T-S- resided together, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Conclusion*

On appeal, the petitioner has not established that she resided with T-S- and entered into the marriage with him in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.