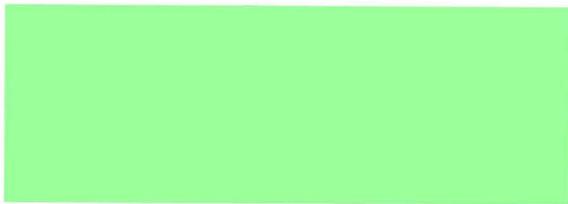


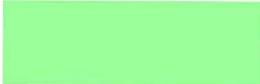
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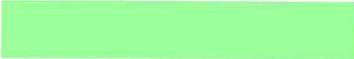
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

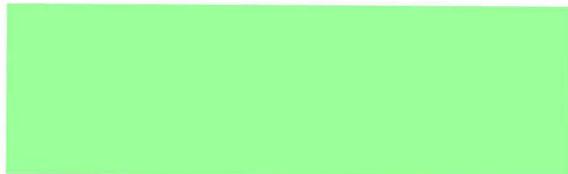


Date: **NOV 12 2014** Office: VERMONT SERVICE CENTER File: 

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 Acting Director, Vermont Service Center (“acting 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 married him in good faith. On appeal, counsel submits a brief.

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].

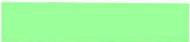
The eligibility requirements for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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) 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.

* * *

(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. . . . 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 is a citizen of Ghana who last entered the United States on December 30, 2008, as a nonimmigrant visitor. The petitioner married E-N-¹, a U.S. citizen, on June [redacted] Virginia. The petitioner filed the instant Form I-360 self-petition on November 8, 2012. The director subsequently issued two Requests for Evidence (RFE's) of, among other things, the petitioner's joint residence with E-N- and her good faith entry into the marriage. Through counsel, the

¹ Name withheld to protect the individual's identity.

petitioner timely responded to the RFE's with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner 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). Counsel's claims on appeal 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 self-petition that she resided with her husband from June 2009 until June 2012 and that the last address at which they lived together was in apartment [REDACTED] on [REDACTED]. On her Biographic Information Form (Form G-325A), for the time period from June 2009 until June 2012, she listed four addresses. In her initial affidavit, dated November 2, 2012, she stated that she lived with E-N- in his apartment on [REDACTED] Virginia, for one month after they married on June [REDACTED]. She explained that they then moved into an apartment on [REDACTED] Virginia, with her three children from a previous marriage, but because E-N- did not have good credit, they had to sublet the apartment rather than rent the apartment themselves. According to the petitioner, she and her husband stayed in one bedroom and her kids slept in the living room. She recounted wanting to find a job, so she "asked [her] husband if he had any problem if [she] moved to [REDACTED] to find work and of course, he was ecstatic that [she] was leaving." She stated that she traveled to [REDACTED] found a job a few days later as a warehouse worker where she continues to work today, and rented apartment [REDACTED]. She further stated that her "husband would travel to see [her] on the weekends or [she] would travel to Virginia and stay with him." The petitioner briefly recounted that after meeting with an immigration lawyer who declined to continue representing them, E-N- went back to Virginia without even saying goodbye.

In response to the RFE, the petitioner submitted a supplemental affidavit, dated September 27, 2013, asserting that she and her husband lived together on [REDACTED] from May 2009 until June 2009, on [REDACTED] from July 2009 until October 2010, and in two different apartments on [REDACTED] from October 2010 until the present. With respect to the apartment on [REDACTED] the petitioner explained that she and her husband were not named on the lease because they were only subletting one of the bedrooms in the two-bedroom apartment. She explained that she was never in direct contact with the landlord and that they were subletting a bedroom from [REDACTED]. According to the petitioner, she has no contact with Ms. [REDACTED] and does not know where she lives. In the petitioner's initial statement, however, Ms. [REDACTED] was the only friend present at the couple's wedding. The petitioner claimed she submitted a letter from Ms. [REDACTED] with her Adjustment of Status application; however, the record does not contain such letter. The petitioner further asserted that in October of 2010, she and E-N- traveled to [REDACTED] together to sign a lease for apartment [REDACTED] that they shared with her cousin's friend, [REDACTED]. According to the petitioner, the apartment was very small and they decided to rent another apartment with two bedrooms for just their family and signed the lease for apartment [REDACTED] on [REDACTED] in October of 2011.

The petitioner failed to provide any probative details of joint residency with E-N-. For example, she did not describe in probative detail any of the couple's four apartments, their shared belongings, or provide any other substantive information regarding her residence with E-N- during their marriage. Statements from the petitioner's children also do not provide any additional information regarding the petitioner's joint residence with E-N- during their marriage. Similarly, letters from friends [REDACTED] do not describe any visit, interaction, or social occasion with the couple at any of their apartments or otherwise address the couple's joint residence.

The petitioner's claims are also internally inconsistent and contradict other relevant evidence in the record. According to her initial statement, she never resided with E-N- in Pennsylvania. She stated in her first statement that she went to [REDACTED] by herself, which made E-N- "ecstatic" that she was leaving, got a job, then rented her own apartment where E-N- visited her on weekends. The petitioner's daughter, [REDACTED] also stated that E-N- "was still living in [REDACTED] [Virginia, and] would come to [REDACTED] on his off days." Similarly, licensed psychologist [REDACTED] also stated in her Psychological Evaluation of the petitioner that the petitioner had taken a job in [REDACTED] in 2010 and only saw her husband on weekends. In contrast, according to the petitioner's supplemental affidavit, the couple went to [REDACTED] to sign a lease together.

Moreover, the petitioner obtained a Virginia Identification Card on January 23, 2009, listing E-N-'s [REDACTED] address. However, the Identification Card conflicts with the petitioner's initial statement in which she asserted she moved in with her cousin on [REDACTED] in December 2008 and "[s]ix months later, in June of 2009, [she] moved in with [E-N-] at his apartment located [on] [REDACTED] . . ." The Identification Card also conflicts with the petitioner's Biographic Information Form (Form G-325A) which indicates the petitioner lived on [REDACTED] from January 2009 until June 2009.

Although the record contains joint income tax returns, lease agreements, and joint bank account statements, the record contains unresolved inconsistencies and lacks detailed and probative information regarding the petitioner's claimed residence with her husband during their marriage. The Immigration and Nationality Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The relevant evidence does not demonstrate that the petitioner and E-N- shared a principal, actual dwelling place 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

In her initial statement, the petitioner recounted meeting E-N- in 2008 during a July 4th barbeque. She explained that he visited her at her cousin's house the next day and that they had coffee, talked, and had sex because there was an immediate attraction. She stated she returned to Italy and that they spoke on the phone daily. She described returning to the United States on December 30, 2008, and that her

relationship with E-N- flourished rapidly and they were married on June 4, 2009. She briefly recounted that everything was great at first, but that he was not happy when her children moved in with them. The rest of her affidavit described his mistreatment of her.

The petitioner did not describe in probative detail the couple's courtship, wedding ceremony, or shared residence and experiences apart from the claimed abuse. In addition, none of the statements from the petitioner's children or friends described the couple's relationship or the petitioner's marital intentions. Although the record includes some photographs of the couple, joint income tax returns, and joint bank account statements, without a more detailed, probative description from the petitioner regarding her marital intentions, she has failed to establish by a preponderance of the relevant evidence that she entered into marriage with E-N- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the director's decision, the petitioner has not established her good moral character.²

Primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). Neither of the petitioner's affidavits contains a statement addressing her good moral character, and none of the friends who submitted statements on her behalf attest to the petitioner's character. Additionally, while the record contains evidence that the petitioner requested a criminal history check from the Commonwealth of Virginia and paid the required processing fee, the record does not contain the results of the background check. Accordingly, the petitioner has failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established that she resided with her husband during their marriage or that she entered the marriage in good faith. Beyond the director's decision, the petitioner 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 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.

² 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).