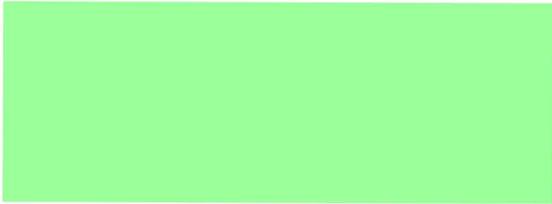


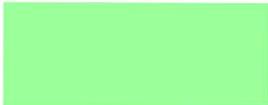


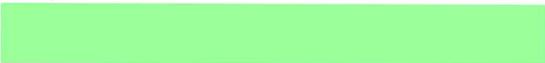
U.S. Citizenship  
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Services

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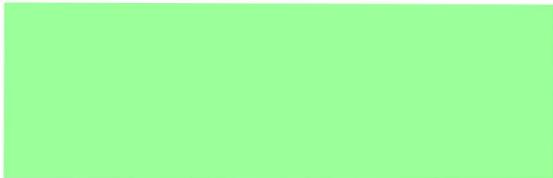
Date: **NOV 12 2014**

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:

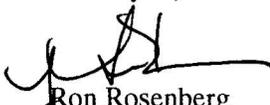


INSTRUCTIONS:

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 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, married him in good faith, and had good moral character.

*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).

An individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she is an alien: “who was a bona fide spouse of a United States citizen within the past 2 years and . . . who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . .” Section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

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.

\* \* \*

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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 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.

\* \* \*

(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 was born in Russia, and last entered the United States as a conditional permanent resident on January 20, 2012. The petitioner married T-B-<sup>1</sup>, a U.S. citizen, on February [REDACTED]. The petitioner filed the instant Form I-360 on July 20, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into her marriage, and good moral character. The petitioner and T-B- divorced on April [REDACTED]. On June 4, 2013, the director issued a second RFE of the petitioner's residence with T-B-, good-faith entry into her marriage, and good moral character. 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 affidavit dated September 19, 2012, the petitioner stated that she first met T-B- a month after she started working at his club. She recounted that they had a brief conversation and exchanged phone numbers after a staff meeting. The petitioner indicated that T-B- wanted to date her, but she was reluctant because she planned to leave the United States in two months. However, she decided to invite T-B- to spend the day with her at a mall, and she enjoyed his company. The petitioner stated that she went on several dates with T-B-, and they fell in love. She indicated that he wanted her to stay in the United States, and after she was unsuccessful in changing her nonimmigrant visa status, they decided to get married. The petitioner stated that after they were married she stopped working and T-B- provided everything for her. The petitioner recounted that she and T-B- drove to San Diego in a recreational vehicle (RV), but apart from the abuse, she did not discuss their trip in any detail. The petitioner also did not discuss in probative detail her courtship and subsequent engagement, decision to marry, marriage ceremony and reception, marital residence, joint belongings with T-B-, or any other shared experiences, apart from the abuse.

In addition to her affidavit, the petitioner provided an affidavit from [REDACTED] her mother, who stated that the petitioner married T-B- out of love. Ms. [REDACTED] indicated that T-B- told his friends that the petitioner cleaned their home, shopped for groceries, and cooked healthy meals; and that his parents, sisters, and friends told her that the petitioner loved T-B-, stayed at the hospital during his treatment, and took care of his dogs. Ms. [REDACTED] stated that the petitioner was sad to see T-B- was not well when he attended a hearing. Ms. [REDACTED] makes only general observations about the petitioner and T-B- as a couple, and provides no detailed substantive information to establish the petitioner's good-faith intent in marrying T-B-.

The petitioner also submitted affidavits from her friends. [REDACTED] stated that she has known the petitioner since August 2008, that she attended the petitioner's and T-B-'s renewal of their marriage

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

vows on their first anniversary. She recounted that she and her fiancé went on vacations with the petitioner and T-B- to San Diego, California; Las Vegas, Nevada; and Sedona and Flagstaff, Arizona, but she provided no detailed, probative information to establish the petitioner's relationship with T-B- and good-faith marital intent. [REDACTED] generally stated that the petitioner told her that she decided to stay in the United States because she was in love with T-B-. Ms. [REDACTED] recounted that she visited the couple for two weeks in September 2009, went to parties with them, and that they seemed "very happy." She stated that she visited the couple on their first anniversary and attended their small wedding ceremony. Ms. [REDACTED] general statements, however, provided no detailed, probative information to demonstrate the petitioner's relationship with T-B- and intentions in marrying. [REDACTED] stated that he was a witness at the petitioner's marriage ceremony, and that the petitioner had "a good faith marriage," but he provided no probative information to establish her relationship with T-B- and good-faith marital intent. The affidavits from [REDACTED] discussed only the petitioner's character or the abuse in her marriage.

The petitioner submitted photographs of herself and T-B- at their wedding; at a concert and with their friends in 2009; on Thanksgiving and Christmas in 2010; on their first and second wedding anniversaries; and in Las Vegas in 2010, San Diego in 2011, and Sedona and Flagstaff in 2011. She also provided joint income tax returns for 2009 and 2010 and a jointly filed extension for 2011, a marriage license, and a document reflecting the petitioner's application for a matrimonial name change.

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-B-. 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, the affidavits of her mother and friends, her income tax returns, and photographs showing she was "completely enamored" with her husband demonstrate her good-faith marriage and joint residence. However, the petitioner's affidavit does not describe in probative detail her relationship with T-B-. For example, she does not discuss in detail their courtship and subsequent engagement, wedding ceremony and reception, joint residence, or shared belongings and experiences, apart from the abuse. Similarly, the affidavits from her mother and friends lack the detailed, substantive information to establish the petitioner's relationship with T-B- and good-faith entry into the marriage. The petitioner also provided photographs of her relationship with T-B- and joint income tax returns, but without a detailed, probative account from the petitioner of her relationship with T-B-, the preponderance of the relevant evidence fails to establish that she entered into marriage with T-B- 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-B-. On the Form I-360 self-petition, the petitioner stated that she lived with T-B- from July 2008 until February 2012, and that their last joint address was on [REDACTED] Arizona. In her affidavit, apart from the abuse, the petitioner stated that her mother stayed at their condominium during a visit, while she and T-B- temporarily moved to a house that T-B- owned in [REDACTED]. The petitioner did not provide a detailed description of her marital residence and her and T-B-'s residential routines.

Ms. [REDACTED] stated that T-B-'s parents told her about the petitioner's taking care of T-B- and performing household chores at her and T-B-'s marital home. Ms. [REDACTED] stated that the petitioner purchased cookbooks to prepare meat and turkey dishes, and lasagna. She stated that T-B-'s parents, sisters, and friends told her that the petitioner took care of T-B-'s dogs. Although Ms. [REDACTED] described some of the petitioner's residential routines, she did not provide the specific address of the petitioner's marital residence, or a detailed description of the couple's marital home and her visits to their home. Although Ms. [REDACTED] stated that she stayed with the petitioner and T-B- for two weeks in September 2009 and visited the couple on their first anniversary, she did not provide the address of the petitioner's marital home; or a detailed description of the couple's home, where she stayed in their home during her visits, and the couple's residential routines. The petitioner's other friends did not discuss any visits to the petitioner's marital residence.

Additionally, the petitioner did not identify any of the photographs of herself and T-S- as taken at their marital home, and the joint income tax returns for 2009 and 2010 and jointly filed extension for 2011 show an address on [REDACTED] Arizona, that is not the claimed marital residence. Furthermore, the petitioner did not list the [REDACTED] residence on her Biographic Information, Form G-325, dated May 18, 2012.

On appeal, the petitioner asserts that she does not have joint documentation due to T-B-'s controlling behavior. 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 provides little probative information to demonstrate a shared residence. Likewise, the affidavits from her mother and friends do not provide the specific address of the petitioner's marital residence, or a detailed description of the couple's marital home or any visits there. When viewed as a whole, the preponderance of the relevant evidence fails to demonstrate that the petitioner and T-B- resided together, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Good Moral Character*

To establish good moral character, the regulation requires 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." 8 C.F.R. § 204.2(c)(2)(v). The petitioner filed the Form I-360 on July 20, 2012, and the

record shows that she resided in Arizona for over three years at the time this petition was filed. The petitioner submitted a court record search from the Superior Court of California [REDACTED] and a criminal background check from the [REDACTED] Metropolitan Police Department, but the petitioner has not provided the requisite clearance for Arizona. The director specifically requested in the RFEs that the petitioner provide a police clearance for Arizona. Although the petitioner provided letters and affidavits from her friends, the director correctly determined this evidence failed to establish her good moral character. On appeal, the petitioner has not provided a police clearance for Arizona. The petitioner, therefore, has not demonstrated that she is a person of 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 T-B-, entered into the marriage with him in good faith, and is a person of good moral character. 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.