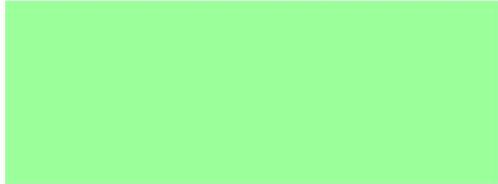
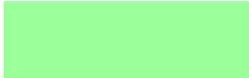


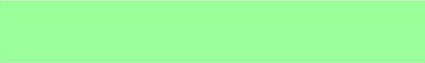


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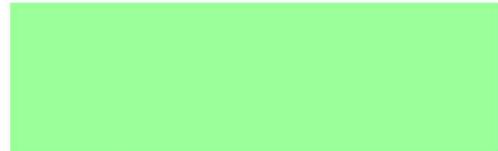


Date: **NOV 14 2014** Office: VERMONT SERVICE CENTER File: 

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, (“director”) denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal. The petition will remain denied.

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 entered into marriage with her husband in good faith and they resided together.

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 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 is a citizen of Kenya who was admitted to the United States on October 3, 2008 as a nonimmigrant visitor. The petitioner married W-F-, a U.S. citizen, on April [REDACTED] in Georgia.¹ The petitioner filed the instant Form I-360 on October 18, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and her residence with her spouse. The petitioner, through counsel, timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a *de novo* basis. Counsel's claims and the additional evidence on appeal fail to overcome the grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence fails to demonstrate the petitioner's entry into her marriage in good faith. In her first statement, the petitioner recounted that she met W-F- through a friend and they started dating. She stated that they became engaged in January [REDACTED] and married in April [REDACTED]. The petitioner stated that the wedding was attended by her relatives and friends. In response to the RFE, the petitioner recounted that W-F- is a car mechanic and she first met him when he was collecting money for her friend's car repair. She stated that her friend worked at an insurance company and she was spending time at the

¹ Name withheld to protect the individual's identity.

company to learn about the business. The petitioner stated that when W-F- and her friend developed a business relationship she began to see him more frequently. She recounted that she and W-F- began dating and he proposed to her in January [REDACTED]. The petitioner stated that they had a small wedding on April [REDACTED]. The petitioner discussed how she first met her husband, but she did not probatively describe their courtship, wedding, joint residence or any of their shared experiences, apart from the abuse.

In response to the RFE, the petitioner also submitted letters from three friends who briefly discussed the petitioner's marriage, but spoke predominately of the abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. [REDACTED] recounted that she once saw the petitioner with W-F-, but she did not further describe her personal knowledge of the relationship. [REDACTED] stated that he frequently went out to eat with the petitioner and W-F-. However, he did not describe his interactions with the couple in probative detail. [REDACTED] stated that he learned from his wife that the petitioner and W-F- had "martial problems." He did not indicate that he has personal knowledge of the martial relationship.

The director accurately assessed the relevant documents submitted below. The petitioner initially submitted a lease for an apartment on [REDACTED], Georgia where she claimed that she resided with W-F-. The lease only has the lessor's name and is not signed by either the petitioner or W-F-. In response to the RFE, the petitioner submitted three undated photographs of herself and W-F- taken at one unspecified location.

On appeal, counsel asserts that the director failed to consider the evidence of abuse, including the petitioner's protection orders, psychological evaluation and medical records, as evidence of her good-faith marriage. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Counsel's assertion that good faith marriage should be presumed because the petitioner established abuse misinterprets the statutory requirements as redundant. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other.

Counsel further asserts that the petitioner does not have access to additional documentary evidence due to W-F-'s controlling behavior and her acquaintances have been unwilling to write statements on her behalf. Counsel contends that the director erred by failing to acknowledge the credible corroborating evidence and insisting on traditional primary and secondary evidence. 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). Rather, 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." 8 C.F.R. § 204.2(c)(2)(vii).

When determining whether or not the petitioner has met his or her burden of proof, U.S. Citizenship and Immigration Services (USCIS) shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R.

§§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof. In this case, the petitioner did not probatively describe her courtship and wedding with W-F- and their joint residence or any of their shared experiences, apart from the abuse. Her friends also focused on the abuse and provided no substantive information regarding her good faith in entering the relationship. The relevant documentary evidence only shows that the petitioner and W-F- were photographed together on one occasion. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record fails to demonstrate that the petitioner resided with her husband. On the Form I-360, the petitioner stated that she lived with W-F- at [REDACTED] Georgia from "April" until January [REDACTED]. However, in her initial statement she recounted that she separated from W-F- July 2011. In her two statements, the petitioner does not describe her home with W-F- or their shared residential routines in any detail, apart from the abuse. The petitioner's friends do not indicate that they ever visited the couple at their residence.

The relevant documentary evidence also fails to demonstrate the petitioner's shared residence with W-F-. As discussed, the lease only has the lessor's name and is not signed by either the petitioner or W-F-. The photographs are not identified as having been taken at the residence the petitioner claims she shared with W-F-. In response to the RFE, the petitioner submitted a medical bill and a certificate for her completion of a pre-licensing course for the state insurance examination. On appeal, the petitioner submits a copy of an envelope from the Social Security Administration. Although these documents are addressed to the petitioner at [REDACTED], they are in her name only and are not probative evidence of joint residence.

In addition, the petitioner submitted in response to the RFE her petition for a temporary protective order, dated July 20, 2011, which shows W-F-'s address as [REDACTED]. However, this address was provided by the petitioner and there is no evidence that the temporary ex-parte protective order was served on W-F- at the address she provided. The petitioner's twelve month protective order indicates that it was issued as a default judgment because W-F- did not appear in court and it was served on W-F- by publication. These documents are therefore of little probative value as evidence of the petitioner's joint residence with W-F-.

On appeal, counsel asserts that the petitioner and W-F- resided together in a subleased apartment and because of damage that was caused to the home, the primary lessees have been unwilling to provide documentation. Counsel contends that the petitioner has shown that she resided with W-F- "through affidavits and all the documents that she could find." As discussed, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof. Here, the petitioner does not describe her home with W-F- or their shared residential routines in any detail and her friends do not indicate that they ever visited the couple at their residence. The relevant evidence shows that the petitioner resided at [REDACTED] but it does not probatively

establish W-F-'s residence at this address with the petitioner during their marriage. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has failed to demonstrate that she entered into the marriage in good faith and resided with her spouse. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.