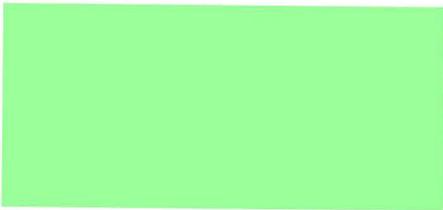




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **NOV 17 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:

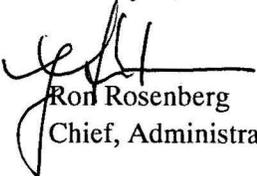


INSTRUCTIONS:

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 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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that she entered into a qualifying spousal relationship in good faith.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

* * *

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

* * *

(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 Djibouti on February [REDACTED] and first entered the United States on August 31, 2008, as a B-2 nonimmigrant visitor. She married her spouse, H-R-, a U.S. citizen, on November [REDACTED] in Minneapolis, Minnesota.¹ The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on June 7, 2011. On August 31, 2012, the director issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into marriage with H-R-. The petitioner timely responded. On January 15, 2013, the director issued a second RFE that, among other things, the petitioner entered into the marriage with H-R- in good faith. The petitioner responded with additional evidence. The director found the petitioner's evidence was insufficient to establish that she entered into the marriage with H-R- in good faith and denied the petition. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. The petitioner claimed on her Form I-360 self-petition that she married H-R- on November [REDACTED] and lived with him from December 2008 until April 2010. In her initial affidavit, she indicated that she came to the United States to seek medical treatment, and that

¹ Name withheld to protect the individual's identity.

when she arrived, she became friendly with her uncle's brother, H-R-, who showed her the "sights in Minneapolis." According to the petitioner, her aunt did not approve of the petitioner spending time with a man outside of marriage, and along with the petitioner's uncle began to pressure her to marry H-R-. The petitioner indicated that she "eventually gave in and married my uncle's brother." She indicated that their wedding was a Muslim ceremony and that her aunt and uncle hosted the marital festivities at their home. She did not describe the wedding ceremony or the festivities. The petitioner explained that after the marriage she and H-R- lived in a studio apartment with one twin bed, and while H-R- slept in the bed he made her sleep on the floor. The petitioner alleged that H-R- did not work, but instead made her work and took all of her money, routinely making her remove her clothing when she came home in order to ensure that she was not hiding money. She alleged that H-R- forced her into sexual relations, required her to cook for him, and eventually kicked her out of the house. The petitioner explained that she sought refuge with her husband's friend, [REDACTED]. She stayed with [REDACTED] for two weeks, conceiving a child with him. Her aunt found her and helped her reconcile with her husband, but after H-R- discovered that the petitioner was pregnant by [REDACTED] he "left our home . . . and took our house key." The petitioner did not describe her intentions toward her husband at the time of marriage or any shared marital routines with H-R- before and after marriage, apart from the alleged abuse to which H-R- subjected her.

The petitioner also provided affidavits from friends and family. Her aunt, [REDACTED] stated that the petitioner and H-R- married in the aunt's home in a traditional Muslim ceremony, and that "the marriage was true and with the intention that the couple would be happy together." She did not elaborate or explain how she determined the petitioner's entry into the marriage was in good faith. She did not describe the petitioner's courtship, wedding ceremony, or post-wedding celebrations. [REDACTED] claimed to have attended the petitioner's wedding to H-R-, where she enjoyed rice, sambusa, khajia, goat meat, candy, and halwa. She asserted that the wedding guests danced and partied until midnight. Ms. [REDACTED] contended that the petitioner told her that H-R- was abusive but "wanted to make the marriage work." Ms. [REDACTED] concluded her statement by confirming that the petitioner had a baby with another man and that she helped the petitioner to obtain financial support for the baby. Ms. [REDACTED] did not claim to have seen the petitioner interacting with her husband after the wedding ceremony or to have had any other experiences that would have provided her with insight into the petitioner's marital intentions. [REDACTED] claimed to have attended the petitioner's marriage ceremony and to have visited the petitioner and H-R- at their studio and their one-bedroom apartment, but did not describe the apartments, or the nature of the visits in any probative detail. The petitioner's aunt indicated that the petitioner's marriage "was true and with the intention that the couple would be happy together," but did not provide any details about the petitioner's courtship, wedding ceremony, or subsequent interactions with H-R- for purposes of establishing her good-faith entry into marriage with him.

With her Form I-360 self-petition, the petitioner included a "Model Lease for Subsidized Programs" for an apartment on [REDACTED] in Minneapolis, Minnesota. Although the names of the petitioner and H-R- are on the lease, the lease is unsigned and does not appear to be a final document showing that the petitioner and her spouse lived together after their marriage. A second lease post-dates the period of time that the petitioner claimed to have lived with H-R- and does not contain his

name. The petitioner provided a bank statement for the period of February 23, 2011 to March 21, 2011. Although this document bears the names of the petitioner and H-R-, it is dated after she claims he abandoned her and therefore does not establish shared financial assets. The petitioner's 2010 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, shows that she filed as "married filing separately"; therefore this also does not establish that she and her husband shared finances. She provided unlabeled photographs of herself taken with H-R- but these only show that they were together at a single, unexplained occasion. Finally, the petitioner provided her child's birth certificate which shows that the petitioner gave birth to a child with someone other than her husband on October 25, 2010. Evidence that the petitioner conceived a child with another man shortly after her marriage to H-R- does not support her claim to have intended to establish a life together with H-R- at the time she entered into marriage with her spouse.

In response to the director's August 31, 2012 RFE, the petitioner provided affidavits from friends and family. [REDACTED] the petitioner's friend, indicated that she only observed the petitioner's husband from a distance at a party and drove the petitioner home from her job on several occasions, dropping her off at her apartment building. [REDACTED], H-R-'s cousin, indicated that he attended the couple's marriage and "regularly met the couple due to our family relationship," but did not describe any particular meeting with them or provide any probative details about their marital relationship. Similarly, [REDACTED] claimed to have attended the petitioner's wedding ceremony and to have spent time with the petitioner after her marriage but did not describe a specific visit or give any details about the time they claimed to have spent with the petitioner and H-R-.

The petitioner also submitted financial information in response to the RFE, which she claims showed her husband used her account; however, as the transactions took place in September 2012, over two years after she claimed H-R- abandoned her, they do not reflect her good-faith entry into marriage with H-R-. According to a November 1, 2012 psychological evaluation from a licensed clinical social worker, the petitioner is suffering from major depression, and recurrent and post-traumatic stress disorder as a result of H-R-'s alleged abuse. While the social worker asserted that the petitioner "happily accepted her fate [in an arranged marriage to H-R-] and made a commitment to spend her life with her husband," the social worker did not provide any probative details or information showing how she was able to come to this determination regarding the petitioner's marital intentions. The petitioner provided additional photographs of her with her husband that appear to have been taken on their wedding day; however, these are insufficient to establish the petitioner's good-faith entry into marriage with H-R-.

In response to the director's second RFE, the petitioner resubmitted the same evidence she had provided in response to the August 31, 2012 RFE and evidence that she had previously submitted it in the prior response.

On appeal, the petitioner resubmits previously provided evidence and suggests that the director had not reviewed the record of proceeding. She provides that she now is living with the father of her child, but does not provide any additional probative information such as details of her wedding ceremony, joint

residence, and shared experiences with H-R-. Accordingly, the petitioner has not established by a preponderance of the evidence that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she entered into her marriage with H-R- in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his 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). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.