

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

(b)(6)

Date: **NOV 18 2014**

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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,

A handwritten signature in cursive script that reads "Ron Rosenberg".

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 has a qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification, that her U.S. citizen spouse subjected her to battery or extreme cruelty, and that she entered into the marriage with her husband in good faith.

On appeal, the petitioner reasserts her eligibility and submits 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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

\* \* \*

(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.

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

\* \* \*

(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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages . . . of the self-petitioner . . . .

(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.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

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(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 South Africa and entered the United States as an H-2B nonimmigrant worker on April 10, 2006. She married her U.S. citizen spouse, P-R-, on May [REDACTED]. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on December 6, 2011. The director issued a request for evidence (RFE) that, among other things, the petitioner shared a qualifying relationship with her U.S. citizen spouse and was therefore eligible for immediate relative classification based on that relationship, that her spouse subjected her to battery or extreme cruelty, and that she entered into her marriage with P-R- in good faith. The petitioner

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<sup>1</sup> Name withheld to protect identity.

responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these four grounds. The director denied the petition and 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.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

A Form I-360 self-petition for this immigrant classification must be accompanied by evidence of citizenship of the United States citizen spouse. Primary evidence of a relationship with a U.S. citizen spouse includes a marriage certificate issued by civil authorities. 8 C.F.R. § 204.2(c)(2)(ii).

On appeal, the petitioner submits a marriage certificate from the state of Louisiana and a copy of her husband's birth certificate establishing that he is a U.S. citizen. Accordingly, the petitioner has established that she had a qualifying spousal relationship with P-R- and her corresponding eligibility for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

*Battery or Extreme Cruelty*

The director found that the petitioner had submitted insufficient evidence to establish that her spouse subjected her to battery or extreme cruelty. Specifically, the director suggested that the petitioner had not provided sufficient evidence regarding an alleged incident of abuse in New Orleans, and that other statements from a friend named [REDACTED] and the petitioner's psychologist did not include sufficient probative details regarding the alleged abuse. On appeal, the petitioner has provided a letter and a Case Chronology Report from the New Orleans Municipal Court relating to the incident of abuse that the petitioner discussed in her affidavits. She also submitted a more detailed affidavit from Ms. [REDACTED] regarding the separate incident of abuse that Ms. [REDACTED] witnessed. Accordingly, the petitioner has submitted sufficient evidence to establish that her spouse subjected her to battery or extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good-Faith Entry into Marriage*

Regarding the director's final ground for denial, the petitioner initially submitted two personal statements. In the first, a typed statement dated September 13, 2012, the petitioner recounted meeting her husband in New Orleans on November 11, 2006, because she passed him on the street every day she went to work. The petitioner stated that eventually, P-R- asked for her phone number and they began to date. The petitioner indicated that P-R- showed her around New Orleans and that she felt safe with him. The petitioner explained that she was shocked when P-R- proposed, but she agreed and they married in a civil ceremony on May 3, 2007. After the marriage, the petitioner

alleged that she and P-R- moved in with his mother and grandmother. The petitioner indicated that she soon found out she was pregnant but explained that she went to Connecticut to earn money and lost the baby while there. She indicated that she took a job providing live-in care to someone in Connecticut and eventually returned to New Orleans. The petitioner alleged that the day after she returned to New Orleans, P-R- demanded money and battered her when she was unable to provide it. The remainder of the petitioner's typed statement focused on describing other episodes of alleged abuse after she and P-R- moved to Georgia. In the petitioner's handwritten and undated statement, she asserted that she and P-R- did not have enough money to open a bank account or file taxes and therefore did not have evidence of commingled assets. The petitioner did not provide any probative information regarding their courtship, P-R-'s proposal, their wedding ceremony, or shared marital routines to establish her good-faith entry into the marriage.

In response to the director's RFE of shared emotional, economic or domestic bonds, the petitioner submitted an additional affidavit in which she indicated that she loved her husband when she met him and had feelings for him. She explained that P-R- planned to adopt her son and made her laugh when he tried to speak her language. The petitioner again asserted that they did not have insurance or a bank account together because her husband worked so little. She claimed that she paid all their bills and had to rent their Georgia apartment under her name alone because P-R- had such bad credit. The petitioner provided a copy of a lease that she indicated was for the Georgia apartment and a hospital statement from her 2007 pregnancy; however, neither document lists P-R- as her husband or otherwise shows that they shared a life together.

The petitioner also submitted a statement from her mother-in-law, who asserted that the petitioner and P-R- lived with her, but did not provide any details about the couple's marital interactions or shared routines. A friend, [REDACTED] provided a statement in which she indicated that she "visited their home and saw a hole in the living room wall," but did not indicate which claimed marital home she visited, for how long, or describe any interactions between the petitioner and her spouse apart from an episode of alleged abuse. As the petitioner's statement and those of her mother-in-law and friend do not provide additional probative details about the petitioner's courtship with P-R-, marriage ceremony or shared marital routines, the RFE response did not establish the petitioner's good-faith entry into marriage with P-R-.

On appeal, the petitioner submits a new affidavit in which she discusses her courtship and asserts that when she and P-R- were dating, he took her around New Orleans to show her the post-Katrina hurricane devastation of the houses. She asserts that they often went to movies and bowling and "did everything together," but does not describe any specific dates, movies they viewed together, or restaurant meals. She indicates that P-R- asked her to marry him, "[w]hen time pass by," but does not describe the proposal in any detail or indicate that it took place on a particular date or at a certain place. She lists the date they married in front of a judge at a courthouse, but does not indicate whether anyone else was present either during the marriage ceremony or for a post-wedding celebration. The petitioner maintains that she moved in with the petitioner's family but soon moved by herself to Connecticut, where she lost their child as a result of an ectopic pregnancy. The remainder of the affidavit primarily

describes the abuse to which P-R- allegedly subjected the petitioner but does not include any probative details about their shared marital routines apart from the abuse.

The petitioner also provides affidavits from two friends. [REDACTED] states that in the “beginning of 07” she told the petitioner that she would be “stopping by on my way to [N]orth Carolina to visit my boyfriend and I will see her and [P-R-].” Ms. [REDACTED] states that she subsequently saw the petitioner and P-R- when they picked her up at the airport on a Thursday, that she went home with them. That Saturday, she claims that she heard them yelling and ran into their bedroom after she heard something fall. Ms. [REDACTED] suggests that P-R- hit the petitioner during her visit and explains that the petitioner subsequently ran away from P-R- to stay with Ms. [REDACTED] in Florida. Ms. [REDACTED] does not name the city or address at which she visited the petitioner and P-R- or the date or month of her visit, nor does she describe their marital residence and the interactions between the petitioner and P-R-, apart from the alleged abuse. [REDACTED] describes an episode of abuse that she witnessed and indicates that she saw a hole in the wall at the petitioner’s home, but does not indicate which of the marital homes she visited or provide any other details about the petitioner’s marital interactions with P-R- for purposes of establishing the petitioner’s good-faith entry into the marriage.

The petitioner’s statements and those of her friends failed to provide probative information regarding her courtship, wedding, marital residences, and experiences with P-R-. The petitioner consequently has not established by a preponderance of the evidence that she entered into marriage with P-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

As an additional matter, the petitioner has not established that she shared a marital residence with her husband.<sup>2</sup> On her Form I-360 self-petition, she indicated that she resided with P-R- from December 2007 until June 2008 and that their shared address for the duration of this time was on [REDACTED], Georgia. However, in her initial typed affidavit the petitioner provided contradictory information, asserting that she and P-R- moved into his mother’s house on [REDACTED] in New Orleans, Louisiana after their May [REDACTED] marriage, that she moved to Connecticut shortly after that for an unspecified period of time, and that they both moved to Georgia on another unspecified date. In her accompanying handwritten affidavit, the petitioner indicated that she was not working when she married P-R- and he was working only a few hours a week so they did not have enough money to open a joint bank account or file income taxes. Accordingly, as evidence that they resided together, the petitioner provided a handwritten document allegedly prepared by her mother-in-law and attesting that the petitioner and P-R- rented a room in her house. The mother-in-law did not describe the shared marital residence, explain how long the petitioner and P-R- resided with her, or otherwise provide

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<sup>2</sup> 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).

probative information that would establish that the petitioner and P-R- resided together in her house.

The petitioner also provided an affidavit from her friend, [REDACTED] who asserted that she visited the petitioner and P-R- at their home, but did not list the state or marital residence she claims to have visited, so this affidavit does not establish that the petitioner and P-R- resided together.

In the affidavit that the petitioner provided in response to the RFE, she asserted that she was having difficulty collecting evidence relating to her time in Georgia because "I never live in Geo[r]gia that long I did move on end up in here Florida [sic]." This contradicts her claim on the Form I-360 self-petition to have lived with P-R- in Georgia for approximately six months from December 2007 until June 2008. The petitioner provided a lease agreement; however, it bears only her signature for an apartment in an unspecified location beginning on December 29, 2007. This document does not establish that she and P-R- shared a marital residence in any location.

On appeal, the petitioner submits an affidavit addressing the grounds for denial that the director listed in her decision. The petitioner again indicates that she lived with P-R- first in New Orleans, that she moved to work temporarily in Connecticut, and then she and P-R- moved to Georgia. However, the petitioner does not describe any of their shared residences or their marital interactions, apart from the alleged abuse to which P-R- subjected her. She concludes with a statement about their final day together in Georgia, asserting that in October of 2008, she secretly broke her lease on their Georgia apartment and moved to Florida while her husband was working at [REDACTED]. This explanation contradicts the petitioner's initial claim to have ceased residing with P-R- in June of 2008.

The petitioner also provided affidavits from [REDACTED] who asserts that she witnessed an episode of abuse by P-R- against the petitioner and followed them home from a bar in New Orleans to make sure she was fine, and comforted the petitioner in her home. Ms. [REDACTED] did not list the shared marital address, indicate whether it was the one that the petitioner claims to have shared with her mother-in-law, or provide other probative information to establish that the petitioner and P-R- resided together. Another friend, Ms. [REDACTED] asserts that she visited the petitioner and P-R-, but does not list the state, the claimed marital residence, or otherwise describe the claimed marital residence. The petitioner provided a certificate of marriage that shows that she and P-R- were not residing together at the time of their marriage, so this document does not show that they shared a marital residence.

The conflicting information that the petitioner has provided about how long she and P-R- resided together and how long they resided in each state undermines the credibility of her claims. Further, the petitioner's statements and those of her friends failed to provide probative information regarding her marital residence and shared routines and experiences. The petitioner has not established by a preponderance of the evidence that she resided with P-R-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner has overcome three of the director's stated grounds for denial. However, the petitioner has failed to establish that she entered into the marriage in good faith, and beyond the director's initial grounds for denial that she resided with P-R-. 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 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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.