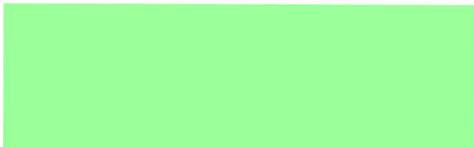


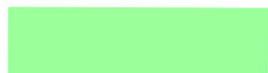
(b)(6)

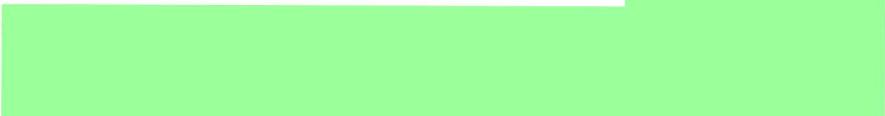
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

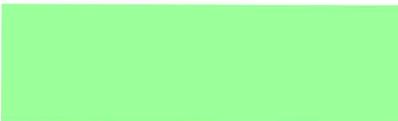


Date: **OCT 06 2014** Office: VERMONT SERVICE CENTER FILE: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (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 and the petition will remain denied.

The petitioner seeks immigrant classification under 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 spouse.

The director denied the petition on the basis of her determination that the petitioner had failed to establish that she married her husband in good faith and resided with him. 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.

Facts and Procedural History

The petitioner is a citizen of Jamaica who entered the United States on July 13, 2003, with a false passport and false nonimmigrant visitor visa. The petitioner married her husband, a U.S. citizen, on November [REDACTED] in New York. The petitioner filed the instant Form I-360 self-petition on August 5, 2013. The director subsequently issued a request for additional evidence (RFE) of the petitioner's good-faith entry into the marriage and that she and her husband resided together. The director found the petitioner's response to the RFE insufficient and denied the petition accordingly. On appeal, counsel submits a brief and evidence relating to the alien relative petitions (Form I-130) filed by the petitioner's husband for the petitioner's children.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility for the following reasons.

Joint Residence

The relevant evidence submitted below fails to demonstrate that the petitioner resided with her husband. On the Form I-360 self-petition, the petitioner claimed that she last lived with her husband on [REDACTED] in New York, and that they resided together from June 10, 2010, and did not

provide an end date for their joint residence, though she indicated in her affidavit that she left him, and her Notice of Appeal, Form I-290B, lists a new address where she currently resides. In her affidavit, the petitioner did not describe her and her husband's home or shared residential routines in any detail, apart from the abuse. Although [REDACTED] mentioned in their affidavits that the petitioner and her husband lived together, and [REDACTED] stated that the petitioner and her husband's "home environment [was] comfortable and relaxed," their affidavits are not supported by any probative description of their observations of the petitioner and her husband's shared residence or their visits there.

The petitioner also submitted bills from [REDACTED] addressed to both the petitioner and her husband at their claimed shared address. The petitioner submitted bills from [REDACTED] but they are addressed only to her spouse. The bail paperwork lists the [REDACTED] address as both the petitioner and her husband's address. The petitioner also submitted the lease for the [REDACTED] address indicating that the petitioner and her husband rented there from June 2012 to May 2013, as well as cash receipts for payment of rent. However, the petitioner also submitted an income tax refund check dated February 27, 2013 and her 2012 income tax forms that list a different address on [REDACTED] during the time the petitioner claims to have been living on [REDACTED]. Given the discrepancies in the record, the evidence submitted, without probative testimony of joint residence, does not demonstrate by a preponderance of the evidence that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence also fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavit, the petitioner stated that she met her husband in 2007 while she was doing laundry and they started talking. She reported that they exchanged telephone numbers and he called her. She stated that they went on the perfect date and fell in love quickly, and then were married on November 25, 2008, in a small ceremony.¹ The petitioner did not describe in probative detail how she met her husband, their courtship, engagement, wedding, or any of their shared experiences, aside from the alleged abuse, nor did she explain why she apparently did not reside with her husband for the first two years of their marriage.

In her affidavit, [REDACTED] indicated that she has known the petitioner and her husband for ten years. [REDACTED] stated that he has known them for six years, that he attended their wedding, and that he has seen them together as a couple. [REDACTED] indicated that they lived near the petitioner and her husband and spent time with them. [REDACTED] recalled that he had been to the petitioner and her husband's house. None of the affiants provided any substantive information regarding their observations of the petitioner's interactions and relationship with her husband prior to and during their marriage, nor did they provide any probative information regarding the petitioner's

¹ The petitioner provided an incorrect date of her marriage. According to the marriage certificate, the petitioner was married on November [REDACTED] with the registration of the marriage occurring on November [REDACTED]

good faith in entering the marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her husband in good faith.

The petitioner also submitted photographs of herself and her husband at their wedding and other occasions, as well as evidence of a joint [REDACTED] account. She submitted a letter from the [REDACTED] that indicated that the petitioner was covered under her spouse's health insurance beginning on October 1, 2012, but the letter does not name her spouse, nor does it explain why the petitioner was not on her spouse's health insurance until four years after their wedding. As stated above, the petitioner submitted joint bills from [REDACTED] but the bank statements show "insufficient funds" and low balances, and do not show that both she and her husband used the account. The petitioner submitted a lease, but the lease does not provide any specific information regarding the petitioner's intentions in entering her marriage. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. In her affidavits, the petitioner briefly describes meeting her husband and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the pictures, bills, lease, and insurance receipt do not demonstrate the petitioner's interactions with or feelings for her husband during their courtship or marriage. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) approval of the Forms I-130 filed by the petitioner's husband on behalf of the petitioner's children is evidence of the petitioner's good faith marriage.

Although similar, the parties, statutory provisions and benefits procured through sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's husband was the petitioner in the alien relative petitions filed on behalf of the petitioner's children and bore the burden of proof in the prior Form I-130 adjudication, in which he was required to establish his citizenship and the validity of the marriage creating the stepchild/stepparent relationship. In contrast, in this case, the petitioner bears the burden of proof to establish that she entered the marriage in good faith. Section 204(a)(1)(A)(iii)(I)(aa); 8 C.F.R. §§ 204.2(c)(1)(i)(H), (ix). As previously discussed, the evidence submitted below is insufficient to demonstrate her entry into the marriage in good faith and other than referencing the Forms I-130 submitted by her husband on behalf of her children, the petitioner did not present any further evidence for consideration on appeal. Accordingly, the record here is insufficient to show that the petitioner 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 established that she entered into the marriage in good faith or that she resided with her husband. She is consequently ineligible for immigrant classification under section

204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.