

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **OCT 08 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:

SELF-REPRESENTED

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The 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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with her husband.

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.

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:

Evidence for a spousal self-petition –

(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.

Pertinent Facts and Procedural History

The petitioner was born in Anguilla, and claims that she entered the United States on December 29, 2009. The petitioner married R-R-,¹ a U.S. citizen on March 14, 2011. The petitioner filed the instant Form I-360 on November 20, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residency with R-R-. The petitioner responded with additional evidence that the director found insufficient, and the director denied the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Joint Residence

The director correctly determined that the record below failed to demonstrate that the petitioner resided with R-R- during their marriage. The petitioner stated on her Form I-360 that she resided with R-R- from September 2009 until March 2012, and their last residence was [REDACTED] in Miami, Florida. In her initial statement, the petitioner did not discuss her claimed marital residence or any shared residential routines with R-R-. The letters the petitioner submitted from her mother-in-law, [REDACTED] sister-in-law, [REDACTED]; sister, [REDACTED] and friends, [REDACTED] also failed to provide any details regarding the petitioner's claimed joint marital residence.

To establish joint residency, the petitioner submitted several documents and photographs. The lease application and lease agreement, dated April 13, 2011, are signed by the petitioner and R-R-, but as noted by the director in the denial, R-R-'s signature on the lease agreement differs significantly from his signature on the marriage certificate and the typewritten font and alignment of his name on the lease is different from that of the petitioner. The auto insurance declaration, dated December 12, 2011, is in the name of R-R- only and excludes the petitioner as a driver. The photographs are of the petitioner and R-R- pictured together, but are undated and the petitioner provides no description of the photographs to establish a connection with her claim of a joint residence.

On appeal, the petitioner provides a second letter in which she discusses her residence with R-R- while they were in school together but prior to their marriage. Regarding their residence after marriage, the petitioner indicates that they moved into an apartment at [REDACTED], but the petitioner does not provide any further information about the claimed marital residence, such as shared residential routines, and descriptions of their apartment and belongings. The petitioner also fails to address the director's discussion of the inconsistencies on the petitioner's lease.

¹ Name withheld to protect individual's identity.

She does, however, submit additional documents related to the claimed shared residence to include a credit report for herself and for R-R-. However, although the claimed marital residence is listed on the credit report for R-R-, it is not shown on the petitioner's credit report. She also submits a letter from [REDACTED] at the refunds/collections department at United Property Management stating that the petitioner and R-R were residents at [REDACTED] from April 14, 2011 to July 1, 2012. Ms. [REDACTED] does not explain whether she is confirming their residence based upon rental records or whether she has personal knowledge of the claimed joint residence. The petitioner also submits school transcripts for herself and for R-R-, but the address on the transcript for R-R- is for a period after the petitioner separated from R-R-. Finally, the petitioner submits a student loan interest statement for R-R- that shows the claimed marital address as well as an FPL utility invoice for a single month's service. In the absence of a detailed, probative statement from the petitioner and her friends and relatives about the claimed marital residence, undated photographs, credit reports where only R-R is listed at the claimed marital residence, and a lease agreement with unexplained discrepancies, the documents showing a shared address do not establish that the petitioner and R-R- shared a marital residence. When viewed as a whole, the preponderance of the relevant evidence fails to demonstrate that the petitioner and her husband resided together, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The record fails to establish that the petitioner resided with R-R-. 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.