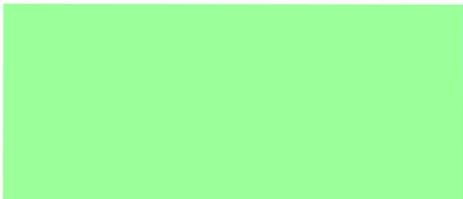


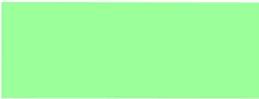
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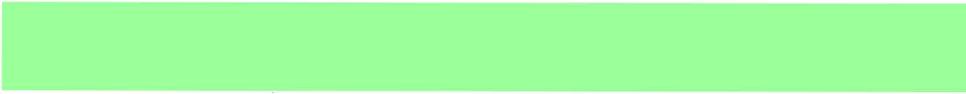
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

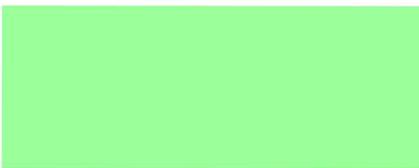


Date: **OCT 10 2014** Office: VERMONT SERVICE CENTER File: 

IN RE: 

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:

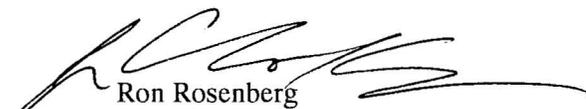


INSTRUCTIONS:

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 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.

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 was the subject of battery or extreme cruelty by her husband, and that she married her husband in good faith. On appeal, counsel submits a statement on the Form I-290B, Notice of Appeal.

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:

(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 or the self-petitioner's child, 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 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. . . .

(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. . . .

(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, a citizen of the Dominican Republic, entered the United States on April 17, 2006 as a nonimmigrant visitor. She married D-R-¹, a U.S. citizen, on December [REDACTED] in [REDACTED] Florida. The petitioner filed the instant Form I-360 self-petition on June 19, 2012. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty suffered by the petitioner, and the petitioner's good-faith entry into the marriage. The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, we find that the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

The director did not err in finding that D-R- did not subject the petitioner to battery or extreme cruelty. In her personal affidavit, dated June 5, 2012, the petitioner stated that from the beginning of their marriage, the couple had financial difficulties, stemming in part from D-R-'s outstanding fines related to a driving under the influence (DUI) arrest and child support arrears. The petitioner asserted that she borrowed money from her father to pay these debts, which D-R- instead used to purchase personal items, alcohol, and drugs. The petitioner indicated that when she confronted D-R- about the situation, he told her that he would "call immigration." The petitioner recounted that although D-R- later apologized and told her that he would not get drunk and behave in that manner again, the reprieve from his behavior did not last long. The petitioner described another argument that occurred when the petitioner discovered that D-R- had taken \$400 of the couple's rent money for his personal use. When the petitioner told D-R- that he needed to get a job, he belittled her employment.

The petitioner stated that D-R- believed he could find a better job in New York where he had family, friends, and contacts. The petitioner asserted that she gave D-R- \$2,000 to support himself while he searched for a job in New York. She stated that he found a job after six months, and she joined him in New York approximately a year after his departure from [REDACTED]. However, the petitioner indicated that after the move D-R-'s irresponsible behavior continued. The petitioner asserted that D-R- could not hold down a job, and the petitioner was left to pay all the bills. Whenever she confronted D-R- about their financial situation, he would become angry, yell, and throw things. The petitioner stated that D-R- showed up at her place of work, after being absent from the home for several days, and yelled at the petitioner in front of her co-workers. The petitioner asserted that D-R- threatened to have her deported on several occasions.

The petitioner described the last encounter that she had with D-R-, when he failed to return home after going out for the evening. The petitioner discovered that he had again taken their rent money from the bank account for his personal use. After initially telling the petitioner that he needed the money for "an emergency" that he would later explain, he did not come home for a week. The petitioner indicated that she changed the locks on the apartment, and then went to stay with a friend because she was afraid of D-R-'s reaction. The petitioner stated that D-R- contacted her and threatened to have her arrested and deported. The petitioner explained that D-R-'s behavior caused her to lose her self-esteem and become afraid of being alone.

In a fee waiver request, submitted contemporaneously with the Form I-360 self-petition and the petitioner's personal affidavit, the petitioner stated that D-R- subjected her to physical and sexual abuse, but did not provide any probative information regarding these claims. In response to the RFE, the petitioner submitted a brief affidavit, similar to that submitted in support of her fee waiver, in which she summarily stated that her husband had subjected her to physical, psychological, and sexual abuse, but did not describe any specific incidents. The petitioner additionally stated that she had changed jobs several times because she feared that her husband would find her, and that she is afraid that her husband will cause her physical harm if she encounters him in the street alone. The petitioner did not describe any specific threatening or violent behavior of her husband underlying her fear. Both the affidavit submitted in support of the fee waiver and the affidavit submitted in response to the RFE are

substantially shorter and written in a significantly different manner than the petitioner's first affidavit, which detracts from their probative value.

The record also contains a report from psychologist [REDACTED] based on two meetings with the petitioner. Dr. [REDACTED] reported a similar factual scenario to that described by the petitioner, and provided some additional details of the petitioner's and D-R-'s relationship not reported by the petitioner in her affidavit. Dr. [REDACTED] indicated that the petitioner told him that D-R- threatened to "beat" her on one occasion, and that he eventually became controlling and did not allow the petitioner to go out or make any friends.

The petitioner also provided affidavits from her former coworkers, [REDACTED] in which they attested to the incident at the petitioner's place of employment when D-R- arrived and yelled at the petitioner. The petitioner submitted an additional affidavit from her friend, [REDACTED] who stated that the petitioner called him crying to report that D-R- was yelling at her and throwing objects while under the influence of drugs and alcohol, and that she was afraid of him. Mr. [REDACTED] stated that the petitioner has been staying at his home since leaving D-R- because she is afraid to stay in the same neighborhood where her husband resides with his family. In an additional affidavit, [REDACTED] the petitioner's former coworker, indicated that he had observed D-R- sleeping at the petitioner's home during the day on a weekday, reeking of alcohol.

In her decision, the director found that the petitioner's affidavits, the psychological report and the third-party affidavits did not establish D-R- battered the petitioner or subjected her to extreme cruelty. On appeal, counsel requests *de novo* review of the previously submitted evidence, but submits no new evidence, such as an additional statement from the petitioner elaborating on her claims of psychological, physical, and sexual abuse.

De novo review of the relevant evidence reveals that the director correctly concluded that the petitioner did not establish that her U.S. citizen spouse battered her or subjected her to extreme cruelty. The petitioner did not attest to any incidents of battery. She asserts that during a period of nearly five years of marriage, D-R- stole her money, yelled at her, and threw things on a few occasions. These incidents, as described in the evidence submitted below, do not reflect a pattern of violent behavior consistent with the definition of extreme cruelty at the regulation at 8 C.F.R. § 204.2(c)(1)(vi). While the petitioner indicated that physical and sexual abuse occurred, she did not describe these incidents. In addition, the petitioner did not provide supporting evidence of D-R-'s other harmful behaviors, such as bank statements showing D-R-'s theft of their rent money. See 8 C.F.R. § 204.2(c)(2) (indicating that self-petitioners are encouraged to submit primary evidence whenever possible). The record, as currently constituted, does not establish by a preponderance of the evidence that D-R- battered or subjected the petitioner to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The petitioner has established her good-faith entry into her marriage with D-R- by a preponderance of the evidence. In her first affidavit, dated June 5, 2012, the petitioner recounted in detail how she met D-R-. She described their courtship and discussed the activities that she and D-R- did together prior to marriage. She recounted D-R-'s desire for her to remain in the United States with him, and her decision

to accept his marriage proposal. The petitioner described immediately moving in with D-R- into a studio apartment in [REDACTED] and later moving to New York with him because he felt he would have improved job prospects in his home state. In addition, the petitioner indicated that she financially supported the couple throughout the marriage, and credibly described D-R-'s difficulties maintaining employment. The petitioner's good-faith marriage to D-R- is supported by 2006, 2007, and 2008 federal tax returns filed as "Married filing jointly"; evidence of their joint bank account; and utility bills in the names of both the petitioner and D-R-. In addition, official correspondence from various government offices and hospital bills indicated that D-R- and the petitioner resided together throughout their marriage and change of address forms show that they both moved from [REDACTED] to New York.

In her decision, the director emphasized the lack of evidence demonstrating commingling of resources.² However, under section 204(a)(1)(A)(iii) of the Act, 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). Here, the petitioner credibly described her courtship, intent in marriage, and shared experiences with D-R-. Her assertions are supported by numerous documents, including federal tax returns, utility bills, joint bank statements, and change of address forms. A preponderance of the relevant evidence establishes that the petitioner entered into her marriage with D-R- in good faith.

Conclusion

The petitioner has not overcome all of the director's grounds for denial on appeal. *De novo* review of the relevant evidence shows that the petitioner entered into marriage with D-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. However, the petitioner has not established that D-R- battered her or subjected her to extreme cruelty, as required by 204(a)(1)(A)(iii)(I)(bb) of the Act, and as further explicated at 8 C.F.R. § 204.2(c)(1)(vi).

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.

² The director also indicated confusion as to whether the submitted evidence corresponds to the petitioner due to the use of "multiple aliases" on bills and bank statements. *De novo* review of the relevant evidence reflects that the documents bear the petitioner's two maiden last names, as they appear on her marriage license and birth certificate, or her married name.