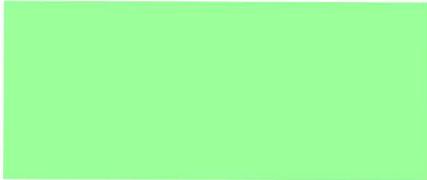




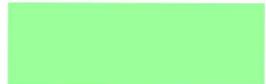
U.S. Citizenship  
and Immigration  
Services

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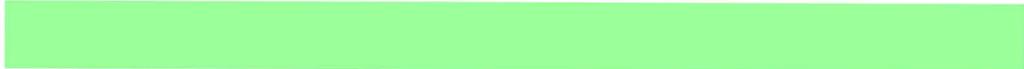


Date: OCT 14 2014

Office: VERMONT SERVICE CENTER File:

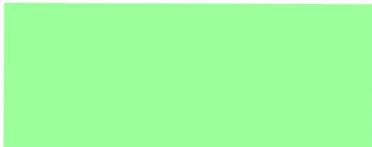


IN RE:



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)

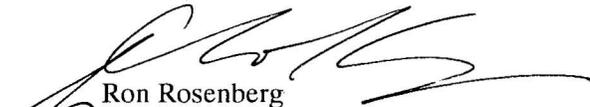
ON BEHALF OF PETITIONER:



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.

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 AAO on appeal. The appeal will be sustained.

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 resided with her former husband. 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)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II). An alien who has divorced an abusive U.S. citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(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, a citizen of Guyana, entered the United States on July 13, 2007 on a nonimmigrant fiancée visa, petitioned by O-M-<sup>1</sup>, a U.S. citizen. The petitioner married O-M- on August 13, 2007 in [REDACTED] Maryland. O-M- divorced the petitioner on January 19, 2011. The petitioner filed the instant Form I-360 self-petition on January 17, 2013. The director subsequently issued a request for additional evidence (RFE) of the petitioner's joint residence with her former spouse, among other issues. The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition for failure to establish the requisite joint residence. Counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's ground for denial for the following reasons.

*Joint Residence*

The petitioner has established by a preponderance of the relevant evidence that she resided with her U.S. citizen former spouse. In the Form I-360 self-petition, the petitioner stated that she resided with her former husband from July 2007 until October 2010. In her initial statement, dated January 7, 2013, the petitioner asserted that she moved into O-M-'s residence on [REDACTED] in Washington, District of Columbia when she arrived from Guyana on July 13, 2007. She credibly recounted that she lived at this residence with O-M- until October 14, 2010, when she sought refuge with her aunt in New York. The petitioner described her life with O-M- in detail, including long days spent at the joint residence while the petitioner was at work. The petitioner also credibly discussed her dependence on O-M- for money, and his control over all of the household bills. The petitioner provided a letter, dated January 8, 2013, from [REDACTED] onsite manager of [REDACTED] condominium association, indicating that the petitioner lived at the [REDACTED] condominium with O-M- from 2007 through 2010. The petitioner provided an application for advance parole, dated January 2009, signed by the petitioner and O-M-, listing her address as the [REDACTED] condominium. The petitioner also submitted her and O-M-'s marriage certificate, which states their address as the [REDACTED] condominium. In addition, the petitioner

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<sup>1</sup> Name withheld to protect the individual's identity.

submitted a statement from her sister discussing the petitioner's difficulties while residing with O-M- and statements from two cousins attesting to the petitioner's residence with O-M-.

In response to the RFE, the petitioner provided an additional personal statement in which she discussed her life with O-M- in detail. She credibly explained that she moved into O-M-'s residence where he had resided for many years before she moved in with him, and that he never added her to any of the household accounts. She stated that she could not provide documentary evidence of her address because O-M- controlled all of the finances in the relationship, and she no longer has any of the few pieces of correspondence she received in the mail while she resided with O-M-. Also in response to the RFE, the petitioner provided annotated versions of previously submitted documents highlighting statements regarding her shared residence with O-M-. In addition, the petitioner submitted a letter from her former client, [REDACTED] who stated that she occasionally had her hair done at the petitioner and O-M-'s home on [REDACTED]. The petitioner also provided an affidavit from her former business associate, [REDACTED] who attested to driving the petitioner home to the [REDACTED] condominium on several occasions.

In his decision, the director found that the submitted evidence, described above, was insufficient to establish the petitioner's joint residence with O-M-. The petitioner, through counsel, timely appealed. On appeal, the petitioner provides an additional letter from [REDACTED] onsite building manager of the [REDACTED] condominium association, credibly attesting to the petitioner's residence with O-M- at the [REDACTED] condominium from 2007 to 2010. Mr. [REDACTED] described several specific reasons why he would visit the former couple's home and knew they were residing together. The petitioner also submits additional statements from a neighbor, the petitioner's sister, and the petitioner's client attesting to personal knowledge of the petitioner's residence with O-M- at the [REDACTED] condominium. In addition, the petitioner provides two records of contributions from her church for 2009 and 2010 addressed to the petitioner at the [REDACTED] condominium.

The record, as supplemented on appeal, shows that the petitioner resided with her former husband during their marriage. The petitioner provided personal statements in which she credibly described her marital residence and explained that O-M-'s controlling behavior and prior residence at the condominium resulted in a lack of documentation in her name for the [REDACTED] address. She provided several third party statements attesting to her joint residence with the petitioner, including two from the condominium complex's onsite building manager. She also provided an application for advance parole, her marriage certificate, and church records further evidencing her marital residence. A preponderance of the relevant evidence submitted below, and also now on appeal, establishes the petitioner's joint residence with her former spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Conclusion*

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). *De novo* review reveals that the petitioner has met this burden. She has

overcome the director's ground for denial and demonstrated that she resided with her former husband during their marriage. Because she has established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.