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U.S. Citizenship
and Immigration
Services

Date: **OCT 24 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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The 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 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.

The director denied the petition for failure to establish that the petitioner’s husband is a U.S. citizen and that she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on that qualifying relationship, that she entered into the marriage with her spouse in good faith and resided with him, and that he subjected her to battery or extreme cruelty during their marriage. The petitioner timely appealed the director’s decision.

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 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)(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.

(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.

(ii) *Relationship.* A self-petition filed by a spouse must 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, if any, 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.

* * *

(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, a citizen of Grenada, entered the United States on January 28, 1999 as a nonimmigrant visitor. On September 18, 2007, she married L-R-¹, a United States citizen, in Georgia. The petitioner filed the instant Form I-360 self-petition on November 14, 2012². The director subsequently issued a Request for Evidence (RFE) of the requisite qualifying relationship, entry into the marriage in good faith, joint residence, and battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

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

Husband's U.S. Citizenship and Petitioner's Eligibility for Immediate Relative Classification

The petitioner indicated on the Form I-360 self-petition that her husband is a United States citizen. In her first affidavit, submitted in response to the RFE, the petitioner stated that L-R- was born on August 15, [REDACTED] Mississippi. She explained that she did her due diligence to obtain a copy of her husband's birth certificate from the State of Mississippi but release of the document requires his permission, which she cannot secure due to the breakdown of their marriage.

With her second and third Form I-360 self-petitions, the petitioner submitted a copy of her husband's birth certificate showing that he was born on August 15, [REDACTED] in Mississippi. Although she does not explain the manner in which she ultimately secured the document, the biographical information contained thereon is consistent with her earlier statements in her affidavit and on the Form I-360 self-petition. Accordingly, the petitioner has established that her husband, L-R-, is a United States citizen and she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on that qualifying relationship.

Although the petitioner has demonstrated that her husband is a U.S. citizen through whom she is eligible for immediate relative classification based on that relationship, she has failed to establish that she entered into the marriage with him in good faith, resided with him, and that he subjected her to battery or extreme cruelty during their marriage.

Entry into the Marriage in Good Faith

¹ Name withheld to protect the individual's identity.

² The petitioner also filed two subsequent Form I-360 petitions: [REDACTED] received on February 14, 2014; and [REDACTED] received on July 25, 2014. Both of these petitions remain pending before the director.

The director correctly determined that the petitioner did not establish her entry into her marriage with L-R- in good faith. In her first affidavit, the petitioner did not discuss her marital intentions toward her husband. In his affidavit, [REDACTED] stated that he has known the petitioner since 1982, remembers her saying that she was getting married to L-R- in September 2007, and that she called him in around Christmas 2007 and said that L-R- was being verbally abusive. Mr. [REDACTED] did not provide any probative information concerning the petitioner's relationship with L-R- apart from the claimed abuse, or her marital intentions.

In support of her two subsequent Form I-360 self-petitions, the petitioner submitted two supplemental affidavits, identical in content except that one is dated January 24, 2014 and the other July 19, 2014. In both affidavits, the petitioner states that she met her husband in Georgia, he was very charming, they had a brief courtship, got married on September 18, 2007, and after a few months she saw a different side of him. The petitioner has not, in any of her affidavits, described in detail her first meeting with L-R-, their courtship, wedding ceremony, joint residence, or any shared experiences. The petitioner also submitted the affidavit of her friend, [REDACTED] Ms. [REDACTED] recalls that she has known the petitioner for 18 years, her daughter for 13 years, and her husband for an unspecified period of time. Ms. [REDACTED] states that the petitioner and L-R- had a beautiful relationship, married in 2007, and he later became abusive. Ms. [REDACTED] does not provide any further probative information concerning the petitioner's relationship with L-R- apart from the claimed abuse, or her marital intentions toward him. When viewed in the totality, the preponderance of the relevant evidence in the record does not demonstrate 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.

Joint Residence

The director also correctly determined that the evidence failed to demonstrate that the petitioner resided with her husband during their marriage. On the Form I-360 petition, the petitioner indicated that she and her husband resided together from June 2007 to June 2009, the relevant period beginning on September 18, 2007 when they married. On appeal, the petitioner states that she does not have any billing statements or bank records as these accounts were in her husband's name alone and when she left in June 2009, she took nothing with her. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). In the present case, however, the petitioner's affidavits and those of others do not establish her joint residence with her husband.

The petitioner has not, in any of her affidavits, addressed whether she and her husband resided together. She has not described any joint residence or shared experiences she attributes to having occurred in a marital home. The petitioner submitted below the affidavit of a case planner, [REDACTED] in Brooklyn, New York. Mr. [REDACTED] briefly stated that the petitioner and L-R- married on September 18, 2007 and lived together in Georgia until June 2009. He added that the petitioner began coming to [REDACTED] in New York in September 2009, after the date the petitioner claims to have resided with her husband. In his affidavit, [REDACTED]

recalled that he spoke on the telephone with the petitioner around Christmas 2007 and could hear L-R- in the background. He added that the petitioner eventually moved to New York. In her affidavit [REDACTED] states that the petitioner "no longer lives with" L-R-. None of the affiants have described a home shared by the petitioner and her husband, any specific occasion they spent there with the former couple, or otherwise provided probative information concerning the claimed joint residence. The preponderance of the relevant evidence in the record does not demonstrate that the petitioner resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The director correctly determined that the evidence does not show that the petitioner's husband subjected her to battery or extreme cruelty as defined in the regulation, and the evidence submitted on appeal fails to overcome this ground for denial. In the petitioner's first affidavit, she stated that her husband controlled everything, had a criminal history and she left with little more than the clothes on her back. The petitioner did not describe any incident during which her husband battered her or her daughter, or subjected either of them to extreme cruelty.

[REDACTED] stated that around Christmas 2007 the petitioner called him on the telephone, said that L-R- was being verbally abusive, and when he heard L-R- in the background he asked if he should call the police but the petitioner declined. Mr. [REDACTED] recalled that the petitioner eventually left L-R- and moved to New York. He stated that the petitioner asked her husband to go to counseling with her at some point because she did not believe in divorce, but he refused. The petitioner has made no such assertion concerning counseling herself, and Mr. [REDACTED] statements do not demonstrate that the petitioner's husband battered her or subjected her to extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). [REDACTED] stated that the petitioner had been receiving domestic violence counseling from his organization in New York since September 2009 and she was also referred to an organization called [REDACTED]. Mr. [REDACTED] stated that the petitioner moved to New York when she could no longer "take the abuse," but he did not specify or describe any incidents of claimed abuse experienced by the petitioner.

The petitioner has stated that she discovered another side of her husband after a few months of marriage, he controlled the finances, she learned that he had a criminal history, and on December 25, 2007 she thought he was going to hit her. The petitioner does not describe in probative detail the events of December 25, 2007 or provide details of any other incident of claimed abuse. She recalls that L-R- employed unspecified verbal and mental abuse and threatened unspecified physical harm and deportation as well. The petitioner states that she left L-R- in June 2009 with little more than the clothes on her back, but she does not describe any precipitating incident or incidents. She recalls that she was scared after learning of her husband's criminal history but does not specify any particular crime or crimes for which he has been convicted. The petitioner submitted internet printouts from a [REDACTED] County, Georgia jail records search showing that L-R- was arrested on two occasions in 2004 and 2005. The petitioner has not submitted final dispositions demonstrating whether her husband was convicted of any charge, and his criminal history alone does not demonstrate that he subjected her to battery or extreme cruelty during their marriage. The petitioner's affidavits do not demonstrate that her

husband battered her or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

states that shortly after marrying the petitioner in 2007 L-R- became abusive toward her, “physically and otherwise.” Ms. does not specify the nature of the claimed abuse to which she refers or describe any particular incident. Ms. explains that the petitioner and her daughter are dedicated to each other and are a hardworking, loving and church-going family that deserves to be kept together. None of the affiants have demonstrated that L-R- battered the petitioner or subjected her to extreme cruelty as defined in the regulation. The preponderance of the relevant evidence does not demonstrate that L-R- ever battered the petitioner or threatened her with violence, psychologically or sexually abused her or otherwise subjected her or her daughter to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that during her marriage, her husband subjected her or her daughter to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that her husband is a United States citizen and thus, she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on that qualifying relationship. The findings by the director to the contrary are withdrawn. The petitioner has not, however, demonstrated that she entered into the marriage with her husband in good faith, resided with him, or that he subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.