



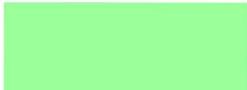
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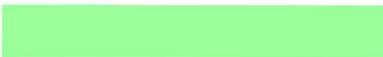
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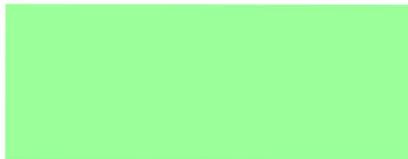
Office: VERMONT SERVICE CENTER

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,

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 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner resided with her spouse, that he battered or subjected her to extreme cruelty, and that she entered into the qualifying spousal relationship in good faith.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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).

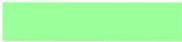
Section 204(a)(1)(J) of the Act states, in pertinent part:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *



(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 . . . and must have taken place during the self-petitioner’s marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

(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 was born in Ghana and entered the United States on May [REDACTED] as a B-2 nonimmigrant visitor. She married her spouse, J-A-,¹ a U.S. citizen, on May [REDACTED] in New Hampshire. She filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 19, 2011. The director subsequently issued a Notice of Intent to Deny the petition (NOID) after determining that the petitioner had submitted insufficient evidence to establish that she resided with J-A-, that he subjected her to battery or extreme cruelty, and that she entered into their marriage in good faith. The director specifically cited to adverse information stemming from the petitioner's prior 2009 interview with U.S. Citizenship and Immigration Services. The petitioner timely responded to the NOID, but the director found the response insufficient to establish the petitioner's eligibility on these grounds and denied the petition. The petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Battery or Extreme Cruelty

In her first affidavit, the petitioner said that J-A- abused her and that she would submit additional evidence. In response to the NOID, the petitioner submitted a second affidavit in which she asserted that after their marriage, J-A- had ups and downs and frequently yelled at her. She described an incident after she asked him about his withdrawal of money from their joint account, asserting that he yelled, pushed her, and cut up his ATM card. The petitioner alleged that J-A- became meaner after his grandfather died, that he often left her at his relatives' homes and went out with his friends. She alleged that he yelled and broke things when she did not give him money on demand, and became jealous. He demanded that she change her outfit if he did not approve of her dress, and sometimes abandoned her for days at a time. The petitioner described an incident when J-A- hit her on the back of her head because she forgot to bring his cigarettes to a party and she refused to give him money to buy more. She indicated that it was not the first time he hit her. The petitioner also

¹ Name withheld to protect the individual's identity.

submitted an affidavit from J-A-'s aunt, [REDACTED] who asserted that J-A- had a history of mental illness and seemed to be happy with the petitioner, but then "his old problems came back and he began to be very abusive and yelling and out of control" with the petitioner. Ms. [REDACTED] said that she heard J-A- yell at the petitioner when they lived with her, that she saw the petitioner "coming out of the room crying," and that she always suspected that J-A- had hit the petitioner. Ms. [REDACTED] indicated that she witnessed one episode of physical abuse when J-A- hit the petitioner on the back of her head, and said that the petitioner eventually admitted that J-A- had abused her "a couple of times."

On appeal, the petitioner asserts that the director did not explain why the petitioner's statements and that of [REDACTED] were insufficient to establish that J-A- subjected the petitioner to abuse or extreme cruelty. The director relied on the petitioner's 2009 statement during a USCIS interview to find that the petitioner's spouse did not abuse her before and after that date; however, the specific episode of battery that the petitioner discussed and that [REDACTED] claimed to have witnessed took place in 2010, well after the petitioner's 2009 statement. The director did not otherwise explain why statements from the petitioner and [REDACTED] describing physical abuse in 2010 were contradicted by prior evidence in the record.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). When viewed in the aggregate, the relevant evidence is sufficient to establish that J-A- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Regardless, the petition is not approvable for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with J-A-. On the Form I-360 self-petition, the petitioner stated that she resided with J-A- from May 2004 to the "present" petition's filing date of July 19, 2011. She listed their last shared address as a first floor apartment on [REDACTED] New Hampshire. The petitioner provided an affidavit in which she stated she had been abused by her husband and would send additional evidence. The statement on the Form I-360 self-petition and her affidavit do not establish that the petitioner resided with J-A-.

In his NOID, the director noted that the petitioner had signed and dated a written statement on April 29, 2009, when she appeared for an interview with J-A-. In her signed statement, the petitioner asserted that "I married [J-A-] because I only married [J-A-] so I can get my green card."

In response to the NOID, the petitioner submitted a second affidavit in which she asserted that when she and J-A- married, she was living with her sister, [REDACTED] at a house off [REDACTED] in [REDACTED] Massachusetts, and J-A- was living with his grandfather at a house on [REDACTED] in

Massachusetts. She indicated that they could not afford an apartment, so they lived with three of J-A-'s relatives in [REDACTED] for the two years following their marriage, to include: (1) aunt, [REDACTED] (2) J-A-'s other aunt, [REDACTED] and (3) J-A-'s grandfather, [REDACTED]. The petitioner did not provide statements from any of these individuals confirming that she and J-A- resided with them at these specific addresses, or any documents such as bills or bank statements reflecting that she and J-A- shared a marital residence at these addresses. The petitioner explained that she and J-A- "finally got an apartment together [on] . . . [REDACTED] in [REDACTED] on May 1, 2006," and then moved in with J-A-'s aunt [REDACTED] in New Hampshire in 2010. The petitioner did not describe any of their claimed marital residences, or indicate when they began to live in each residence and for how long. She did not indicate that she resided with her own family during this time.

The petitioner also submitted an affidavit from J-A-'s aunt, [REDACTED] who asserted that the petitioner and J-A- lived with her and that she witnessed an episode of abuse in November 2010. She did not list the address that she claims they shared, state how long the petitioner and J-A- lived with her or where they resided within her home, nor did she claim to have visited the petitioner and J-A- at any of the other claimed marital residences. Because neither the petitioner nor J-A-'s aunt described the marital residences the petitioner claims to have shared with J-A- or otherwise provided probative details about the claimed marital residences, these affidavits do not establish that the petitioner resided with J-A-.

In response to the NOID, the petitioner also submitted photographs of her, J-A-, and other relatives. Although some of the photographs have handwriting indicating that they were taken at the claimed [REDACTED] marital residence, the photographs do not reflect an address or location. The petitioner also submitted IRS Forms 1040A, U.S. Individual Income Tax Return, for 2006 through 2009, and several accompanying IRS Forms W-2, Wage and Tax Statements. While these documents reflect both the petitioner's name and that of J-A- at the [REDACTED] address she claimed was their joint marital residence, none of the tax returns are signed by the petitioner and J-A-, nor is there evidence that any of them were filed with the IRS. Although the petitioner submitted evidence that the State of Massachusetts deposited State Tax Refunds in 2009 and 2010 into a bank account that lists both of their names, she did not provide the related Massachusetts State tax returns showing that she and J-A- filed as a married couple. The petitioner included copies of cable bills and bank account statements reflecting her name and that of J-A- in [REDACTED] Massachusetts and then at an address in New Hampshire.

However, the petitioner's A-file record contains a prior Form I-864, Affidavit of Support, which her cousin, [REDACTED] signed on January 30, 2008, and filed on her behalf. In support of the Form I-864, Mr. [REDACTED] provided several Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, for 2005 through 2007, all of which show that the apartment on [REDACTED] in [REDACTED] Massachusetts was actually his apartment. Despite the petitioner's claim that she resided with J-A- and his various family members from 2005 to 2006, and that they "finally got an apartment together [on] . . . [REDACTED] on May 1, 2006," Mr. [REDACTED] 2005 IRS Form 1040 reflects that he resided in that apartment from 2005 through 2007. Further, Mr. [REDACTED] declared the

petitioner to be his dependent in 2005.² This contradicts her claim to have been living with J-A- and his family since 2004. Accordingly, the petitioner did not establish that she and J-A- resided together from May 2004 until 2006 when they “finally” obtained an apartment together at the claimed [REDACTED] street residence.

On appeal, the petitioner asserts that the director failed to fully address the petitioner’s evidence or explain what was inconsistent. In fact, the director quoted in full the petitioner’s 2009 statement indicating that she married J-A- for the sole purpose of securing a green card. In his NOID, the director also explained that the petitioner’s record showed that the [REDACTED] residence in fact belonged to her cousin and that his tax returns reflected that she resided with him during the time she claimed to be residing with J-A- and his family. On appeal, the petitioner does not describe any of the marital residences she claims to have shared with J-A- in Massachusetts or New Hampshire, nor does she provide any additional evidence that they shared a marital residence at either location. Instead, she asserts that “people of low income often have unstable living conditions and move frequently, and this is a reason to keep a reliable mailing address.” Although the petitioner stated that she lived in [REDACTED] Massachusetts with J-A- from 2004 to 2010, and in New Hampshire after that, the petitioner’s affidavits and those of J-A-’s aunt lack any substantive description of the claimed marital residences in Massachusetts or New Hampshire. Other contradictory evidence in the record shows that the [REDACTED] address was actually her cousin’s apartment and not that of the petitioner and J-A-. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with J-A-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner’s good-faith entry into her marriage with J-A-. On the Form I-360 self-petition, the petitioner asserted that she lived with J-A- from May 2004 until the “present.” The petitioner did not include any information about her good-faith entry into their marriage in her initial affidavit. She provided a copy of her marriage certificate, but this establishes that she married J-A- rather than her intentions at the time of her entry into the marriage.

In response to the NOID, the petitioner briefly described her courtship, explaining that she met J-A- in the summer of 2003 when they both attended a party “on [REDACTED]” She indicated that J-A- was the first person to ask her to dance and that they started dating. The petitioner asserted that J-A- introduced her to his family, and that he asked her to marry him in November of 2003. She claimed that although she thought it was too soon, she accepted his offer. She explained that after their marriage in May of 2004, they lived together until 2010, but apart from descriptions of the alleged abuse that J-A- subjected her to, she did not describe their daily routines or shared experiences. She indicated that their marriage “was not in great shape” when they went to her 2009 interview with USCIS, but that she “did not understand what was going on” when she signed some papers reflecting that she married J-A- for the sole purpose of obtaining lawful permanent resident status.

² On the 2005 IRS Form 1040, Mr. [REDACTED] declared the petitioner to be his “sister.”

The petitioner also provided an affidavit from J-A-'s aunt, who attested that she knew that the petitioner and J-A- were in love when they met. The aunt asserted that although she and the other family members liked the petitioner, they were aware of J-A-'s pre-existing mental issues and did not think the petitioner and J-A- should marry. The aunt described witnessing at least one episode of battery when J-A- hit the petitioner while they were residing with her, but did not include probative information about the petitioner's relationship with J-A- for purposes of establishing the petitioner's good-faith entry into the marriage. The petitioner also provided photographs of her with J-A- with handwritten notations indicating that they were taken at various locations in Massachusetts and New Hampshire.

On appeal, the petitioner indicates that she has already provided evidence of her good-faith entry into the marriage with J-A-, but includes no additional probative information such as details of her courtship with J-A-, their wedding ceremony, joint residence, and shared experiences. The petitioner's statements and those of J-A-'s aunt failed to provide probative information regarding their courtship, wedding, marital residence, and experiences. The petitioner has not established by a preponderance of the evidence that she entered into marriage with J-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

As an additional matter, the petitioner has not established her good moral character.³ Primary evidence of a self-petitioner's good moral character is his or her affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner's residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v).

The petitioner filed the instant petition on June 19, 2011. Her affidavits do not address her good moral character. Moreover, the petitioner lived in [REDACTED] Massachusetts and [REDACTED] New Hampshire during the three-year period preceding the filing of the petition, but failed to provide the required clearances or background check from these jurisdictions. Accordingly, because the petitioner failed to address her good moral character in her affidavits and failed to provide all of the required police clearances, she has not established by a preponderance of the evidence that she has good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Moreover, the petitioner has not established a qualifying spousal relationship with J-A- and her corresponding eligibility for immediate relative classification. According to the regulation at 8 C.F.R. § 204.2(c)(2)(ii), evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii)(I) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all of the petitioner’s prior marriages. The petitioner’s record of proceeding contains a prior Form I-485, Application to Register Permanent Resident or Adjust Status, which she filed on May 9, 2005. [REDACTED]. At Part 3 of her Form I-485 application, the petitioner attested that she has the following children in Ghana:

NAME	DATE OF BIRTH
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	

According to the notes that the interviewing USCIS officer made on the petitioner’s Form I-485 application during her October 13, 2005 interview, the petitioner told the interviewing officer that the children were “living with [her] mother . . . Husband abandoned prior to coming to U.S.”

The petitioner subsequently submitted another Form I-485 application on July 11, 2008. [REDACTED]. On that application she asserted that she has the following children in Ghana:

NAME	DATE OF BIRTH
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	

According to notes made on the 2008 Form I-485 application during the petitioner’s March 18, 2009 interview, the petitioner told the interviewing officer that the four children had three different fathers and the petitioner “never married any of them.” The petitioner has not resolved the inconsistent claims regarding her prior husband and the identities of her four children. If she was married in Ghana, then she has not provided a divorce decree establishing that she was divorced from her first husband and therefore eligible to marry J-A- when she arrived in the United States. If she was not married to anyone in Ghana and did not have the four children listed on her 2005 Form I-485 application, then she has not explained why she subsequently claimed an entirely different group of children and named three different fathers to those children on her 2008 Form I-485 application. Regardless, based on the contradictory information that the petitioner has provided, she has not established that she was free to marry J-A-. Accordingly, the petitioner has not established that she had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she resided with J-A-, that she entered into their marriage in good faith, that she has a qualifying spousal relationship with J-A- and corresponding eligibility for immediate relative classification, and that she has good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.