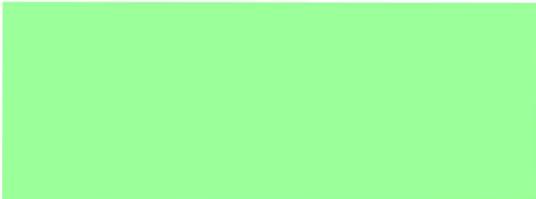




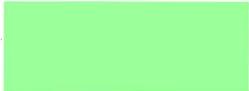
U.S. Citizenship
and Immigration
Services

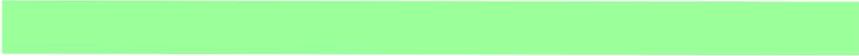
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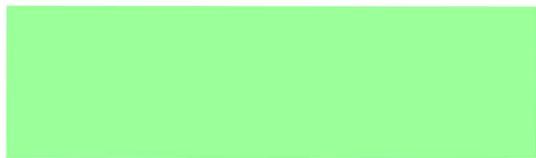
Office: VERMONT SERVICE CENTER

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 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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that she entered into the marriage with her husband in good faith.

On appeal, the petitioner reasserts her eligibility and submits 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:

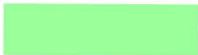
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight 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.

* * *

(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.

* * *

(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 Kenya on September [REDACTED] and entered the United States as a B-2 nonimmigrant visitor on August 8, 2005. She married her spouse, R-L-, whom she claimed is a U.S. citizen, on August [REDACTED] California.¹ The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on November 14, 2011. On November 22, 2011, the director issued a request for evidence (RFE) of the petitioner's good moral character and her good-faith entry into marriage with R-L-. The petitioner timely responded. On May 8, 2013, the director issued a second RFE for, among other things, additional evidence of the petitioner's good-faith entry into marriage with her U.S. citizen spouse. The petitioner responded to the second RFE with additional information, which the director found insufficient to establish the petitioner's eligibility on this ground. The director denied the petition and 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.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage with R-L- in good faith. On the Form I-360 self-petition, the petitioner asserted that she lived with R-L- from July 2006 until November 2007. In her initial affidavit dated November 9, 2011, the petitioner explained that she came to the United States in August 2005 so that she could "help prepare for and attend my childhood friend and classmate, [REDACTED] wedding," and that she met R-L- when they were assigned to coordinate the same wedding duties. She asserted that she "stayed in [REDACTED] home in California until I moved in with my husband. [REDACTED] wedding took place in January 2006." The petitioner indicated that R-L- first proposed to her in April of 2006 while they were at an [REDACTED] restaurant, but that she waited to accept his second proposal at an unnamed restaurant in May of 2006. The petitioner advised that she met R-L-'s mother and sister at their house in [REDACTED] shortly after her engagement, and thought that R-L- was a "family man." Aside from other details about the alleged abuse, the petitioner did not provide probative details about her good-faith entry into the marriage. The petitioner indicated that she had asked her friends to provide detailed affidavits to support her claims to have entered into the marriage with R-L- in good faith, but that they refused.

While the petitioner included her marriage certificate with the petition, this simply establishes that she and R-L- married. She also provided photographs of her with R-L- but as the photographs were undated and at various unknown and undescribed locations, these documents do not establish her good-faith entry into the marriage.

¹ Name withheld to protect the individual's identity.

In response to the first RFE, the petitioner provided a new affidavit in which she asserted that her decision to marry was not taken lightly as evidenced by her decision to accept only R-L's second proposal after five months of dating. She indicated that she and R-L- discussed having children, and how they would accomplish their financial goals by having him work full-time while she acted as homemaker. She did not provide additional details regarding their courtship, the types of activities they enjoyed together, or her interactions with R-L- except as it relates to the claim of abuse.

In response to the second RFE, the petitioner provided a third affidavit in which she indicated that she had no additional evidence of her good-faith marriage to R-L-, and suggested that because the agency accepted that R-L- subjected her to abuse, it should also consider her willingness to stay married to him as evidence of her good-faith entry into the marriage. However, each regulatory criterion for this immigrant classification must be established separately.

The petitioner also provided affidavits from [REDACTED] Ms. [REDACTED] did not indicate that she visited the petitioner and R-L- together or had any personal insight into their marriage. [REDACTED] asserted that she visited the petitioner and her spouse for three to four days at their residence, ate meals with them, talked for hours, and thought that they seemed to be very happy together, but she did not describe any of the meals, discuss their conversations, or describe the petitioner's interactions with R-L-. Accordingly, these letters do not contain probative details that would establish the petitioner's good-faith entry into the marriage.

On appeal, the petitioner indicates that she has already provided evidence of her good-faith entry into the marriage with R-L-, and includes no additional probative information such as details of her courtship with R-L-, their wedding ceremony, joint residence, and shared experiences.

In addition to the lack of probative evidence regarding her good-faith marriage, the petitioner's A-file contains contradictory evidence regarding her courtship and residence with R-L-. On a prior Form I-360 self-petition that she filed on October 29, 2009, she claimed that she began living with R-L- in January 2006. Further, in an April 24, 2007 Form G-325A, Biographic Information, the petitioner claimed that she lived in [REDACTED] Massachusetts from August 2005 to April 2006, and then lived with R-L- from April of 2006. Both of these claims contradict her claims to have lived with [REDACTED] in [REDACTED] until she moved in with R-L- in July of 2006. In addition, they do not support her current claim to have met R-L- in January of 2006 and to have begun living with him only after approximately seven months of courtship.

The conflicting information that the petitioner has provided about when she met R-L-, how long they courted before they began living together, and whether she even resided in California when they first met undermine the credibility of her claims. Further, the petitioner's statements and those of her friends failed to provide probative information regarding her courtship, wedding, marital residence, and experiences. The petitioner has not established by a preponderance of the evidence that she entered into marriage with R-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

As an additional matter, the petitioner has not established that she shared a marital residence with R-L.² The petitioner asserted on her instant Form I-360 self-petition that she resided with R-L- from July 2006 until November 2007. On the accompanying Form G-325A, she asserted that she resided at the [REDACTED] address from 2006 until November 2007. In the November 9, 2011 affidavit for this petition, the petitioner asserted that she came to the United States in August 2005 to help her childhood friend prepare for his wedding. She claimed that she stayed in the California home of that friend, [REDACTED] until she moved in with her husband in July of 2006 to a residence on [REDACTED] California. She described their home and its contents, indicating that it was a two-bedroom townhome. The petitioner explained that she lived with R-L- in one bedroom and they kept the other bedroom available as a guest bedroom. The petitioner also asserted that she did not have any evidence that she resided at the [REDACTED] address because R-L- controlled all of the finances, paid the rent, and she never signed a lease or paid utility bills. According to the petitioner, she and R-L- never opened a bank account together because she had no money and no social security number.

The petitioner provided a copy of her marriage certificate, which listed the claimed marital residence at [REDACTED]. She also provided a copy of an immigration receipt notice sent to her at the claimed joint address. Although the petitioner included several affidavits prepared by her friends in 2010, the affiants did not state that they ever visited the petitioner and R-L- at the claimed joint residence.

The director did not request evidence that the petitioner and R-L- resided together in the RFEs. Regardless, the petitioner submitted an affidavit dated July 19, 2013, in which she asserted that she had no evidence of her joint residence with R-L- because she was completely dependent on him. She indicated that because he controlled her, she did not have a joint account, insurance, evidence of joint ownership of property or other types of documents. She also submitted an affidavit from [REDACTED] who stated that she visited the petitioner at her [REDACTED] residence on two occasions, including one overnight visit with the petitioner and R-L-. She confirmed that it was a two-bedroom townhome, but provided no additional details about the residence or its furnishings. On appeal, the petitioner does not submit additional evidence regarding her joint residence with R-L-.

As discussed, the petitioner's record of proceeding contains contradictory evidence regarding her claimed residences. On her prior Form I-360 self-petition, she indicated that she began living with R-L- in January 2006. Further, in an April 24, 2007 Form G-325A, the petitioner claimed she lived in [REDACTED] Massachusetts from August 2005 to April 2006, and then lived with R-L- from April of 2006. Both of these claims contradict her claims to have lived with [REDACTED] until she

² 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).

moved in with R-L- in July of 2006.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “affidavits or any other type of relevant credible evidence of residency may be submitted.” 8 C.F.R. § 204.2(c)(2)(i). Although the petitioner claimed in her July 2013 affidavit and in her appeal brief that she has difficulty remembering events in her relationship because of the abuse she endured in her marriage to R-L-, this does not explain why her statements are inconsistent even with respect to whether she lived in Massachusetts or California prior to residing with R-L-. In this case, to the extent that the petitioner requests that the agency rely on her statements because she has no evidence of her residence with R-L-, the documents and affidavits submitted by the petitioner are inconsistent and detract from the credibility of her claim to have lived with a friend in [REDACTED] until she met R-L- in January of 2006 and then to have shared a joint residence with R-L-. In addition to these unresolved discrepancies, the petitioner’s affidavits and those of her friends lack any substantive description of her residence with her spouse. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with R-L-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Moreover, the petitioner has not established a qualifying spousal relationship with R-L- 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 evidence of the citizenship of the U.S. citizen spouse.

In her initial affidavit, the petitioner asserted that R-L- controlled their documentation as part of his abusive and controlling behavior. She explained that she had to obtain her marriage certificate from [REDACTED] as evidence of R-L’s citizenship. More specifically, she asserted that the marriage certificate “reflects my husband’s full name, date of birth and place of birth....He was born on March [REDACTED] in Tennessee. Therefore I know he is a U.S. citizen.”

The marriage certificate, which the petitioner and R-L- appear to have signed, reflects that R-L- was born in Tennessee on March [REDACTED] and that the petitioner was born on September [REDACTED]. However, the petitioner’s birth certificate and passport show that she was born on September [REDACTED]. Moreover, the petitioner submitted a Form G-325A in support of her prior Form I-485 application, on which she declared that R-L- was born in [REDACTED] Michigan. The petitioner’s record of proceeding contains R-L’s birth certificate, a prior Form I-130, Petition for Alien Relative, Form I-864, Affidavit of Support, and Form G-325A, all of which R-L-submitted on the petitioner’s behalf. These documents all show that R-L- was born in [REDACTED] Michigan. The petitioner’s assertion that R-L- controlled her access to their documentation as part of his abusive control over her does not explain why her marriage certificate contains incorrect information about her own date of birth as well as contradictory information about her husband’s place of birth. Because this immigrant classification requires the

petitioner to be or to have been married to a U.S. citizen, all of the information she submitted to establish that R-L- is a U.S. citizen and that she married him is material to adjudication of this petition.

Considering the conflicting information within the record regarding R-L-'s place of birth and citizenship as well as the petitioner's true date of birth and therefore her identity, she has not established by a preponderance of the evidence 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 entered into the marriage with R-L- in good faith, that she resided with R-L-, that she had a qualifying spousal relationship with R-L-, and her corresponding eligibility for immediate relative classification. 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.