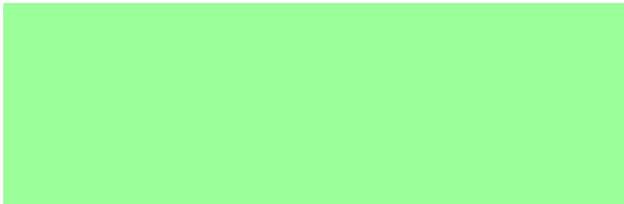


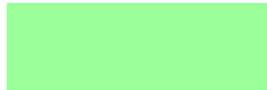


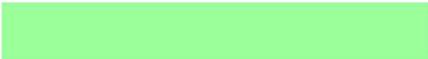
U.S. Citizenship
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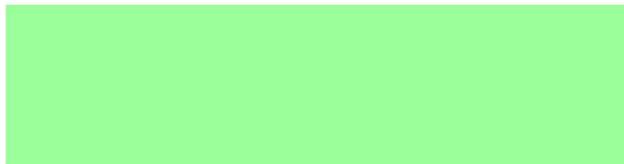
Date: **OCT 28 2014**

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:

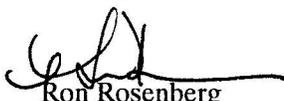


INSTRUCTIONS:

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.

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 sustained.

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 entered into the marriage with her spouse, a United States citizen, in good faith, and that they resided together. On appeal, the petitioner, through counsel, submits a brief and a supplemental affidavit.

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].

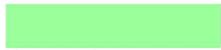
The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 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.

* * *

(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 is a citizen of Nigeria who last entered the United States on November 7, 1997 as a B-2 nonimmigrant visitor. The petitioner married J-S-¹, a U.S. citizen, on October [REDACTED] in Nevada. She filed the instant Form I-360 self-petition on November 6, 2012. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the petitioner's good-faith entry into the marriage and joint residence with her spouse. The petitioner timely responded with further evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and counsel timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome both of the director's grounds for denial as follows.

Joint Residence

The petitioner submitted documents jointly addressed to her and her husband at the two residences they shared during their marriage including monthly utility account statements, a casualty insurance policy and joint income tax returns. The petitioner also submitted a landlord's letter and a joint residential lease. The letter, by [REDACTED] indicated that the petitioner and J-S- were his tenants at their shared residence on [REDACTED] until November 2008. The lease, for a property on [REDACTED] named the petitioner and J-S- as tenants for a term from December 1, 2008 to May 31, 2010. While the lease is signed only by the petitioner and the

¹ Name withheld to protect the individual's identity.

landlord, she reasonably explains in her supplemental affidavit on appeal why the signature of J-S- is missing.

In his affidavit, the petitioner's nephew, [REDACTED] recalled that the petitioner and J-S- resided together first at the petitioner's apartment on [REDACTED] and later on [REDACTED] a family member of the petitioner, described one occasion during which she visited the former couple in their shared apartment. In her affidavit, [REDACTED] stated that she had known the petitioner from church for nine years and recounted how in 2007, J-S- disrupted a prayer meeting at the former couple's joint residence on [REDACTED]

The petitioner further clarifies on appeal that after J-S- moved in to her apartment on [REDACTED] they added his name to her utility accounts because he was sharing those expenses with her. She recounts how after their wedding, they wanted to combine their finances and have a joint checking account but were told by her credit union that J-S- had written a fraudulent check and the checking system was looking for him. Similarly, the petitioner explains that her automobile insurance rate increased after adding J-S- to her policy and she learned from the insurer that he had been convicted of driving under the influence.

The preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with her husband after they married, first in her apartment on [REDACTED] and later at a home on [REDACTED]. The petitioner's supplemental affidavit provides a credible account of her and her husband's joint residence and her statements are supported by credible supporting evidence. When viewed in the aggregate, the relevant evidence shows that the petitioner resided with her husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In her first affidavit, the petitioner recounted how in 2000, she met J-S- who was a longtime friend of her sister's in whose home she was staying, they became friends and in October 2002, and he asked her to dinner. She recalled that J-S- took her to a Halloween party after which they dated for five years and he proposed marriage in [REDACTED]. The petitioner stated that on October [REDACTED] she and J-S- had a small wedding ceremony followed by a small party. She explained that they did not have a honeymoon because she could not leave her son who suffers from cerebral palsy. The petitioner stated that their marriage problems began after J-S- moved in to her apartment, he began drinking regularly, angering easily, and becoming abusive to both her and her son.

In her affidavit, the petitioner's sister, [REDACTED] stated that J-S- had been her best friend for many years before she introduced him to her sister, they all went out together as friends and then J-S- and the petitioner courted for years before marrying in [REDACTED]. The petitioner's nephew, [REDACTED] stated that he met J-S- when he began dating the petitioner, he believed the former couple was a "match made in heaven," and he was pleased to learn they were marrying, as J-S- appeared to be kind, graceful and fit in well with their family.

On appeal, the petitioner provides further probative detail of her entry into the marriage with J-S- in good faith, recounting in detail their courtship, shared interests and experiences, his marriage proposal, their wedding ceremony and joint residence.

The preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner entered the marriage with her husband in good faith. The petitioner's affidavits provide a credible account of her marital intentions and are supported by other credible evidence. Her sister and nephew further attest to her good-faith entry into the marriage. When viewed in the aggregate, the relevant evidence shows that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). On appeal, the petitioner has met this burden. She has overcome the director's grounds for denial and demonstrated that she resided with her husband during their marriage and that she married him in good faith. 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.