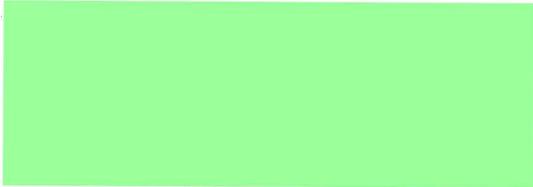


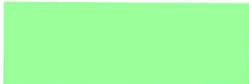


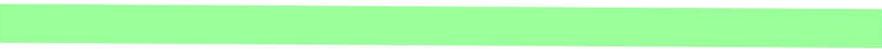
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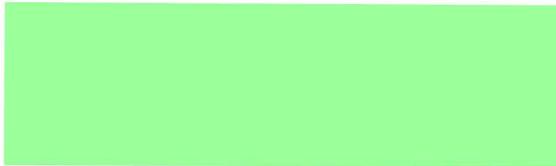
Date: **OCT 29 2014**

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. 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 Acting Director, Vermont Service Center, (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 her U.S. citizen spouse.

The director denied the petition based on the petitioner's failure to establish that she resided with her husband, that she married him in good faith, and that he battered her or subjected her to extreme cruelty.

On appeal, the petitioner, through 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)(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.

(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. . . .

* * *

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Jamaica, entered the United States on October 18, 2006 as a nonimmigrant guest worker. She married S-G-¹, a U.S. citizen, on July [REDACTED] Florida. The petitioner filed the instant Form I-360 self-petition on April 19, 2011. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty suffered by the petitioner, the petitioner's good-faith entry into the marriage, and joint residence with her 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 and counsel timely 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, as supplemented on appeal, we find that the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The preponderance of the relevant evidence does not establish that the petitioner's husband battered her or subjected her to extreme cruelty. In her initial Form I-360 submission, the petitioner provided an affidavit from her landlord [REDACTED] dated January 18, 2011. In the affidavit, Ms. [REDACTED] stated that when S-G- was preparing to go out of town to visit his children from a prior relationship, he would ask the petitioner for money. Ms. [REDACTED] recounted one incident where S-G- knowingly overdrew his and the petitioner's joint bank account. The petitioner provided printouts showing that a deposit account in her and S-G-'s names was overdrawn as described by Ms. [REDACTED] and that a hold was placed on a checking account in the petitioner's name only to pay a portion of the overdrawn account. Ms. [REDACTED] asserted that S-G- left the petitioner for eight months after that incident before he returned. Ms. [REDACTED] also indicated that the day before the petitioner departed for seasonal employment in Michigan, S-G- allowed the mother of one of his children into Ms. [REDACTED] apartment where the petitioner rented a room. Ms. [REDACTED] asserted that woman stole her daughter's jewelry. Ms. [REDACTED] recounted that the petitioner worked to support her family, as S-G- was unable to find employment.

In response to the RFE, the petitioner provided a letter from [REDACTED] [REDACTED], dated September 25, 2012, advising that the petitioner was registered for its state certified domestic violence program on September 23, 2011 and attended 17 survivor support groups. The letter did not discuss any specific abuse suffered by the petitioner.

In her decision, the director correctly concluded that the petitioner did not establish that her husband had battered her or subjected her to extreme cruelty. On appeal, the petitioner submits a personal affidavit dated August 21, 2013. In the affidavit she states that one year into her and S-G-'s

¹ Name withheld to protect the individual's identity.

relationship, S-G- became verbally abusive. The petitioner indicates that S-G- used profane language in response to her requests that he seek employment. She asserts that S-G- refused to work, leaving her to support the couple, the petitioner's two children, and S-G-'s five children. The petitioner recounts that S-G- repeatedly took money from the couple's joint bank account that was designated to support their children. On appeal, the petitioner resubmits the bank printouts regarding an incident in August 2008 when the couple's joint deposit account was overdrawn. The petitioner states that S-G- told her that she could not do anything about the bank account due to her immigration status, and that if she tried to get help from the police, he would report her to immigration. The petitioner discusses an incident when S-G- allowed the mother of one of his children to steal jewelry from the apartment where the petitioner resided. The petitioner states that when she returned from her temporary employment in Michigan, S-G- was gone and never returned. She asserts that she sought assistance from [REDACTED] and has attended many survivor support groups, where she has learned that she is better off without S-G-.

Also on appeal, the petitioner submits an undated statement from her acquaintance [REDACTED]. In the statement, Ms. [REDACTED] asserts that she went out with the petitioner and S-G- on several occasions, until S-G- began using obscene and belittling language toward the petitioner. In addition, the petitioner provides an affidavit dated April 7, 2011 from her former supervisor, [REDACTED]. Mr. [REDACTED] attests to often hearing the petitioner discuss her husband's verbal and emotional abuse. Mr. [REDACTED] states that instead of seeking employment, the petitioner's husband would stay home and watch television, and would allow the petitioner to support him. In their statements, neither Mr. [REDACTED] nor Ms. [REDACTED] describe any specific incidents of abuse.

The preponderance of the relevant evidence submitted below and on appeal does not establish that the petitioner's husband battered her or subjected her to extreme cruelty. The petitioner does not attest to any incidents of battery. She asserts that S-G- used profane language, refused to get a job, took money from their joint account, and allowed his child's mother to steal jewelry from her landlord. These incidents, as described in the evidence submitted below and on appeal, do not reflect a pattern of violent behavior consistent with the definition of extreme cruelty at the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner provided documentation regarding the theft of money from the joint account; however, the documentation shows that the account was overdrawn on one occasion, and was closed a few days later. It does not demonstrate a pattern of behavior. The petitioner did not provide additional bank statements from the joint account. *See* 8 C.F.R. § 204.2(c)(2) (indicating that self-petitioners are encouraged to submit primary evidence whenever possible). The record, as currently constituted, does not establish by a preponderance of the evidence that S-G- battered or subjected the petitioner to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The preponderance of the relevant evidence does not establish that the petitioner married S-G- in good faith. With her initial Form I-360 self-petition submission, the petitioner provided an affidavit from her landlord [REDACTED] which described details of the alleged abuse. The affidavit did not address the petitioner's and S-G-'s courtship, wedding ceremony, or shared experiences. Although the affidavit was prepared by the petitioner's and S-G-'s landlord, in whose home the petitioner and S-G- rented a room, the affidavit does not contain testimony regarding the petitioner and S-G-'s joint

residence. Also in the initial submission, the petitioner provided the first and last page of a bank statement in her and S-G-'s names for the period of October 23, 2009 through November 19, 2009; however, the petitioner did not submit the page containing the record of transactions for the statement period. In a statement submitted in response to the RFE, the petitioner indicated that she has not had contact with her husband since May 2009, prior to the period covered by the bank statement. In her statement, she certified that she resided with S-G- at an apartment on [REDACTED] but did not provide any further information regarding their shared residence.

The director correctly determined that the relevant documentation submitted below was insufficient to establish that the petitioner entered her marriage with S-G- in good faith. In her decision, the director discussed possible additional evidence that could have been submitted to support the petitioner's claim, including additional joint bank account statements and a detailed personal affidavit from the petitioner.

On appeal, the petitioner provides a personal affidavit dated August 21, 2013. In her affidavit, the petitioner discussed negative aspects of her marriage, but did not provide information regarding how she met S-G-, their courtship, wedding ceremony, shared residence and other experiences. She summarily stated that during their courtship and first year of marriage "everything was great," but did not provide a probative account of those periods. Also on appeal, the petitioner provided an undated statement from acquaintance [REDACTED] in which Ms. [REDACTED] states that she went out with the petitioner and S-G- on several occasions; however, she does not provide any information regarding these outings except to indicate that she stopped going out with them after S-G- began to use profanity toward the petitioner. In addition, the petitioner provides an affidavit dated April 7, 2011 from her former supervisor, [REDACTED]. In the affidavit, Mr. [REDACTED] states that he often heard the petitioner talk about negative aspects of her relationship with her husband, but does not indicate that he has any information regarding the petitioner's intent in marriage. Neither Ms. [REDACTED] statement, nor Mr. [REDACTED] affidavit describes the petitioner's and S-G-'s courtship, wedding ceremony, or other shared experiences beyond the claimed abuse.

Also on appeal, the petitioner submits copies of her federal income tax return for 2008. Her filing status is listed as "Married filing separately." The petitioner did not indicate why she filed her income tax separately from S-G-. On appeal, counsel asserts that the petitioner's federal income tax filing status, the previously submitted marriage license and certificate, and the affidavits indicating that the affiants were aware that the petitioner is married to S-G- provide support for the validity of the petitioner's marriage. However, the director determined that the petitioner is legally married to S-G-, and the petitioner's qualifying relationship is not at issue on appeal.

The petitioner also resubmitted the documents regarding the August 2008 overdraft of her and S-G-'s joint deposit account, and the first and third pages of a joint checking account statement for the period from October 23, 2009 to November 19, 2009, when the petitioner states she no longer had contact with S-G-. Counsel asserts that the fact that the accounts were established in both names is in itself evidence of a good-faith marriage. In her August 21, 2013 affidavit, the petitioner indicates that she funded the accounts with her own earnings and states that she told S-G- that he could not take money from their joint account. It is not apparent from the evidence provided that both the petitioner and S-G- regularly utilized the account, or that S-G- even had the petitioner's permission to use the account. In addition,

the petitioner submitted documentation indicating that she maintained a separate active checking account (ending in 3363) in her name only. Regardless, the existence of joint accounts that are not intended to be utilized by both parties is not probative of the petitioner's intent in marriage. The petitioner also submitted undated, unlabeled photographs of her and S-G- on five occasions, including photographs of what appear to be their wedding ceremony. The petitioner has not explained the significance of the photographs or provided a probative account of her shared experiences with S-G-. Thus, the photographs do not provide probative information regarding the petitioner's intent in marriage.

The preponderance of the relevant evidence submitted below and on appeal does not demonstrate that the petitioner entered into marriage with S-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The preponderance of the relevant evidence does not establish that the petitioner and S-G- resided together during their marriage. On the Form I-360 self-petition, the petitioner indicated that she resided with S-G- from July 2007 until February 2008. She also stated that she last resided with S-G- in May 2009 at the [REDACTED] apartment. The petitioner arrived in the United States in October 2006. However, on the Form G-325A, Biographic Information, submitted by the petitioner with her Form I-360 self-petition, the petitioner provided only one United States address, indicating that she began residing at the [REDACTED] apartment in June 2008. She did not state where she resided from her October 2006 arrival in the United States until June 2008. The Form G-325A does not provide any address for seven month period between July 2007 and February 2008 during which the petitioner claimed to have resided with S-G-.

The petitioner submitted joint bank account documentation dated August 2008 with the [REDACTED] address. She also provided a joint bank account statement covering October and November 2009 with a New York address, but did not provide any additional information regarding her residence in New York. With her initial Form I-360 submission, the petitioner provided an affidavit from her landlord, [REDACTED] apartment. Ms. [REDACTED] did not describe the petitioner and S-G-'s living arrangements in her apartment, or indicate when either began residing in the home. She stated that when the petitioner left for her seasonal employment in Michigan, the petitioner told S-G- to stay "in the room she rented because she was coming back and she was still paying rent there," but that S-G- "refused to stay in the apartment." On the Form G-325A, the petitioner indicated that she was employed in Michigan from May 2009 until September 2009. Ms. [REDACTED] appears to refer to the room as having been rented solely by the petitioner.

In response to the RFE, the petitioner submitted a statement certifying that she and S-G- "shared the same address as shown on the identification cards," along with photocopies of her and S-G-'s Florida identification cards showing the [REDACTED] address. Although the petitioner indicated that she and S-G- utilized the same address, she did not state that they resided together. She did not state any other address where the couple shared a joint residence.

In her decision, the director correctly concluded that the relevant evidence, described above, did not establish that the petitioner resided with S-G-. The director suggested further evidence that might help the petitioner establish her and S-G-'s joint residence, including a detailed personal affidavit. On appeal, the petitioner submits a personal affidavit dated August 21, 2013; however, the affidavit is devoid of probative information regarding the petitioner joint residence with S-G-. She does not state when they moved in together, or where they resided. The petitioner asserts that she was the sole provider for the couple and their collective seven children. However, the petitioner does not explain which individuals resided with her in the room she rented at the [REDACTED] apartment. The petitioner's claim that she asked S-G- "to watch over [their] apartment" while she went to Michigan for seasonal employment is not further explained, and appears to indicate that S-G- was not residing with her at the time she departed for Michigan. The affidavit from [REDACTED] dated April 7, 2011, states that the petitioner told Mr. [REDACTED] that S-G- spent his days "at home" watching television, but did not provide any further description of the home and whether it was a home that he shared with the petitioner. The statement from [REDACTED] does not discuss the couple's residence.

The petitioner had not provided consistent information regarding where and when she resided with S-G-. Further, the documents submitted below and on appeal do not contain a probative description of the petitioner's joint residence with S-G- at any location or for any time period. Consequently, a preponderance of relevant evidence does not demonstrate that the petitioner resided with her spouse during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner was battered or subjected to extreme cruelty by her spouse, that she resided with him during their marriage, and that she entered into their marriage in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

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

ORDER: The appeal is dismissed.