U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: SEP 0 8 2014 Office: VERMONT SERVICE CENTER File:

IN RE: 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 Director, Vermont Service Center, ("the director") revoked approval of the immigrant visa petition after properly notifying the petitioner 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 citizen of the United States.

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

> The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

> Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

Section 204(a)(1)(A)(iii) 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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

> 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 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, the following:

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Romania, was last admitted to the United States as a nonimmigrant visitor on December 10, 2003. She wed E-P-, a U.S. Citizen, on May 15, 2004 in Illinois.[1] The petitioner filed the instant Form I-360 on October 13, 2009. The Form I-360 petition was approved on June 7, 2010. The petitioner's marriage to E-P- was terminated in a divorce on July 21, 2010.

On January 11, 2011, the petitioner appeared at the Chicago Field Office in connection with the adjustment of status application she filed based upon the approved Form I-360.[2] Subsequent to that

[1] Name withheld to protect the individual's identity.

[2] Form I-485, Application to Adjust Status, Receipt Number filed August 25, 2010 and denied December 14, 2012.

interview, questions arose regarding the credibility of the petitioner's supporting evidence. The director issued a Notice of Intent to Revoke (NOIR) on October 5, 2012, and requested that the petitioner provide evidence to resolve inconsistencies in the record. The petitioner, through counsel, submitted a timely response, which the director found to be insufficient. The director revoked approval of the petition on January 4, 2013 and counsel appealed.

On appeal, counsel submits a brief and the petitioner's previously filed evidence.

We conduct appellate review on *a de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's determinations. The appeal will be dismissed for the following reasons.

Joint Residence

On the Form I-360, the petitioner stated that she resided with E-P- from December 2003 until August 2008 and their last joint address was an apartment on In her personal statement, she recounted that she and E-P- initially resided in an apartment on in Illinois. However, she did not provide the exact dates of her residence with E-P- at this apartment building. Nor did she describe their homes or shared residential routines in any detail. She submitted an affidavit from her former mother-in-law, and letters from her friends, These individuals also do not describe having ever visited the former couple at their residence(s).

The petitioner submitted the following documentary evidence below: a lease signed by the petitioner and E-P-; a vehicle registration card and certificate of title in both names; cable, utility and telephone bills in both names; bank statements reflecting a joint checking account; cellular telephone bills in E-P-'s name only; a copy of a signed joint 2005 tax return; copies of unsigned joint tax returns for 2004 and 2006; and undated photographs of the couple taken at unspecified locations. The probative value of these documents is undermined by derogatory evidence in the record, of which the petitioner was made aware in both the NOIR and the revocation notice. The joint lease submitted by the petitioner is for the rental of an apartment at , Illinois from May 15, 2004 until May 15, 2005. The 2004 tax return, vehicle registration card and certificate of title, telephone and cellular telephone bills and bank statements all contain this address. On August 23, 2012, United States Citizenship and Immigration Services (USCIS) officers contacted the property manager and purported signatory of the lease, Ms. indicated that she had never seen E-P- at the apartment building and the petitioner resided with another individual, Ms. further stated that the copy of the lease presented by the petitioner was the form she uses, but her signature on the lease is forged and the lease contains discrepancies from other leases she had on file.

Counsel submitted in response to the NOIR: a letter from copies of the biographical and visa pages from the petitioner's passport; evidence that E-P- was incarcerated in May 2008, a few months prior to the couple's separation; a death certificate; and a letter from the petitioner's

employer attesting to the petitioner's good moral character. stated that he is related to the petitioner and resided with her and E-P- from 2004 until 2005 at the apartment on in However, he did not further describe his residence or interactions with the former couple during his purported joint residence with them. The death certificate reflects that a woman named " died on July 10, 2012 at her home on Counsel asserts that Ms. death is "one month prior to the alleged interview date with USCIS personnel." However, the director determined that the death certificate was not for the property manager, but for the property manager's 84-year-old mother, who shared her name. The determination that the petitioner initially submitted a forged lease and in response to the NOIR she submitted a death certificate that she misrepresented as belonging to another individual provided the director with good and sufficient cause to revoke approval of the instant petition.

On appeal, counsel asserts that since the lease was the form used by Ms. it is authentic. Counsel contends that the director failed to verify Ms. signature on the lease and he did not identify the discrepancies in the lease. Counsel also contends that Ms. failed to address whether she was working as a property manager when the lease was executed. Counsel states that the NOIR did not provide the petitioner with the "correct and full identification disclosure of the individual witness." *De novo* review of the record shows no error in the director's decision. The petitioner submitted a copy of a lease that Ms. identified as the correct form, but that does not, itself, indicate that the contents of the lease are genuine. name is on the lease and the director provided this name to the petitioner in the NOIR, contrary to counsel's assertion that the petitioner was not informed of Ms. identity. Counsel's assertion that Ms. failed to address whether she was working as a property manager when the lease was executed is belied by counsel's claim that the petitioner's lease, which is purportedly signed by Ms. is genuine. The record shows that USCIS officers presented the lease to Ms. and she verified that it was not her signature on the lease and she had rental receipts for the property from 2004 to 2005. Ms. was also able to identify discrepancies in the lease when she compared it to other leases in her possession.

On appeal, counsel contends that the director focused on only one "disputed piece of evidence" and failed to consider the petitioner's remaining documentation, which establishes her eligibility by a preponderance of the evidence. Counsel, however, fails to articulate how the remaining evidence establishes the petitioner's joint residence. The petitioner in her personal statement did not provide the exact dates of her residence with E-P- at their apartments on Nor did she describe their homes or shared residential routines in any detail. In fact, the petitioner does not reference the address at any point in her statement. Her friends and mother-in-law also do not describe ever having visited the couple at their residence(s). The photographs the petitioner submitted are not identified as having been taken at any location that she claims to have resided with E-P-. Accordingly, the record does not establish that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In the petitioner's statement, she recalled that she met E-P- at a birthday party. She briefly recounted in a one-sentence statement that during their courtship she and E-P- "went to the beach, ' She stated that E-P- proposed to her on February 14, 2003 and they moved in together in March 2003. The petitioner failed to describe, in any specific detail, her wedding ceremony, joint residence with her spouse or any of their shared experiences, apart from the abuse.

briefly discussed the petitioner's marriage, but spoke predominately of the abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. Ms. stated that she and her husband invited the petitioner and E-P- to their house, but she did not further describe these social interactions. Ms. stated that the petitioner and E-P- were her neighbors, but she did not describe her interactions with the couple in any probative detail. Ms. stated that she met the petitioner during Christmas of 2003, but failed to further discuss her personal observations of the couple's relationship.

only spoke of their knowledge of the abuse and did not indicate that they ever interacted with the couple or otherwise had personal knowledge of the relationship. stated that he resided with the couple, but did not provide any information on his interactions with them or his personal knowledge of their relationship.

As discussed, the petitioner submitted the following joint documentation: a vehicle registration card and certificate of title; utility and telephone bills; bank statements; tax returns; and photographs. The probative value of several of these documents, including the 2004 tax return, vehicle registration card, vehicle certificate of title and bank statements, is undermined by the fact that they are all addressed to the petitioner and E-P- at the address for which the petitioner submitted a joint lease that was forged. In addition, the petitioner's joint tax returns from 2004 and 2006 are unsigned and she failed to provide evidence that any of the joint returns were filed with the Internal Revenue Service (IRS). The photographs submitted by the petitioner are undated and taken at unspecified locations.

On appeal, counsel asserts that the preponderance of the evidence establishes the petitioner's good faith entry into the marriage. However, the petitioner in her statement failed to describe in probative detail her courtship with E-P-, their wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. None of the petitioner's friends discussed their observations of the petitioner's interactions with E-P- during the couple's courtship or marriage. The petitioner's mother-in-law also failed to discuss particular social interactions or visits with the couple in any probative detail. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she entered into marriage with her husband in good faith and they resided together. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden to establish her eligibility. 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed and approval of the petition will remain revoked.