



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **SEP 10 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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”) 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 for failure to establish that the petitioner entered into marriage with her husband in good faith, they jointly resided together, and he subjected her to battery or extreme cruelty during their marriage.

On appeal, 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 . . . 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:

*Evidence for a spousal self-petition –*

(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.

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(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 record reflects that the petitioner is a citizen of Kenya who entered the United States on [REDACTED], 2003 as a nonimmigrant visitor. The petitioner obtained a divorce from her first husband, H-K-, on [REDACTED], 2008 in Nairobi, Kenya. She wed her second husband, M-W-, in Arizona on [REDACTED], 2008.<sup>1</sup> The petitioner and her first husband, H-K-, obtained a second divorce in Minnesota on [REDACTED], 2010. She then remarried her second husband, M-W-, in Arizona on July 13, 2010. The petitioner filed the instant Form I-360 on January 27, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage, her residence with her husband, and the requisite battery or extreme cruelty. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Joint Residence*

On the Form I-360, the petitioner stated that she lived with M-W- from August 2008 until October 2010, but she did not provide their last joint address. In her initial statement, the petitioner recounted that she obtained a second divorce from H-K- in Minnesota because she learned during her immigration interview that their divorce in Kenya may have been invalid. The director determined that the petitioner had a qualifying relationship with M-W- after the couple's second marriage in Arizona on [REDACTED] 2010. On appeal, counsel asserts that the petitioner's first divorce from H-K- in Kenya was valid because the petitioner was domiciled in Kenya and her qualifying relationship with M-W- began after their first marriage in September 2008. Even if the petitioner's qualifying relationship with M-W- began after their first marriage on [REDACTED], 2008, the record still does not demonstrate the couple's joint residence. Therefore, we need not make any determination regarding whether the petitioner's Kenyan divorce was valid.

The petitioner recounted that she resided with M-W- at an apartment on [REDACTED] in [REDACTED] Arizona until October 2008 when she returned alone to Minnesota for medical treatment. She stated that she came back to Arizona in December 2008, but then moved back alone to Minnesota in January 2009 for additional medical treatment and because she was employed there. She stated that she made trips to visit M-W- in Arizona, but continued to reside alone in Minnesota where she was employed. She recounted that she returned to Arizona for her second marriage to M-W- in July 2010, but again moved back to Minnesota in August 2010. In response to the RFE, the petitioner

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<sup>1</sup> Names withheld to protect the individuals' identities.

stated that she considered Arizona her home and Minnesota as the place where she commuted for work. The petitioner, however, did not describe her home(s) with M-W- or their shared residential routines in either of her affidavits.

The affidavits from the petitioner's friends fail to describe the affiant's personal knowledge of the petitioner's shared residence with M-W-. [REDACTED] and [REDACTED] stated that they shared meals with the couple at their home. However, they failed to describe these visits in any probative detail. [REDACTED] stated that he visited the couple at their home during his travel to Arizona. He did not, however, describe his interactions with the couple at their home, or provide detailed information about this visit. [REDACTED] and [REDACTED] mentioned they visited the couple at their apartment on [REDACTED]. However, the petitioner did not mention moving with M-W- to an apartment on [REDACTED] in either of her affidavits and the address of her last joint residence with M-W- was left blank on her Form I-360.

The petitioner submitted the following relevant evidence: a joint tax return for 2008; [REDACTED], [REDACTED] and [REDACTED] statements; an automobile insurance policy; a [REDACTED] statement; and photographs of the couple. This documentation also fails to establish the petitioner's joint residence with M-W-. The automobile insurance policy is dated shortly before the couple separated. Although the petitioner and M-W- had a joint [REDACTED] bank account in Arizona, the petitioner during the same time period had her own bank accounts addressed to her in Minnesota with [REDACTED] and [REDACTED]. The photographs submitted by the petitioner are undated and are not identified as having been taken at any specific residence that the petitioner shared with M-W-.

The petitioner provided with her Form I-360, a letter from her employer, [REDACTED] Program Coordinator of [REDACTED], an assisted care facility. Ms. [REDACTED] stated that the petitioner had been employed at the [REDACTED] home for the previous five years. The address and website on the letterhead show that the facility is located in Minnesota, indicating that the petitioner remained employed in Minnesota throughout her relationship with M-W-. Several of the petitioner's medical documents also list her address in Minnesota.

On appeal, counsel asserts that the petitioner was living and working in Minnesota while maintaining a residence in Arizona. Counsel states that the petitioner submitted copies of her boarding passes as evidence of her visits to Arizona. Counsel, however, fails to articulate how the evidence demonstrates that the petitioner and M-W- shared joint residence, as that term is defined under the Act. Although the petitioner may have intended to reside with her husband, the Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The petitioner, in her affidavits, does not probatively describe any periods of joint residence with M-W-. Her friends also do not provide detailed descriptions of any visits to the couple's residence(s). The relevant evidence shows that the petitioner may have visited Arizona, but she was employed and resided in Minnesota throughout her marriage to M-W- while he lived in Arizona. Therefore, the petitioner's "principal, actual dwelling" place was in Minnesota. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Entry into the Marriage in Good Faith*

The relevant evidence also fails to demonstrate the petitioner's entry into her marriage in good faith. In her initial affidavit, the petitioner stated that she met M-W- in Arizona in the lobby of a hospital in December 2007. She briefly recounted that she went out to eat with M-W- on two occasions and then she returned to Minnesota. The petitioner stated that when she visited M-W- in Arizona in March 2008 he proposed to her and they wed on [REDACTED], 2008. In her affidavit submitted in response to the RFE, the petitioner reiterated how she first met M-W- and stated that she spent "lots of time" with M-W- during their courtship. The petitioner, however, failed to probatively describe their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The affidavits from the petitioner's friends also fail to provide probative information regarding the petitioner's good faith in entering the relationship. [REDACTED] indicated that she knows of the petitioner and M-W- as a married couple, but she failed to provide any substantive information establishing her personal knowledge of the relationship. [REDACTED] stated that he visited the couple at their home during his travel to Arizona. He did not, however, discuss his personal observations of the petitioner's interactions with or feelings for M-W- in detail other than to briefly state they "were comfortable and well acquainted with each other." [REDACTED] stated that she socialized with the couple, but she did not describe any particular visits or social occasions with the couple in probative detail. [REDACTED] i and [REDACTED] stated that they visited the couple, but spoke predominately of the alleged abuse. The petitioner also submitted a letter from her mother, [REDACTED]. Ms. [REDACTED] discussed the couple's marriage, as it was described to her by the petitioner, but she resides in Kenya and does not have first-hand knowledge of the marital relationship.

The petitioner's documentary evidence also fails to establish that she entered the marriage in good faith. She submitted: boarding passes for her flights to [REDACTED]; cellular telephone statements; a joint tax return for 2008; bank statements; a joint automobile insurance policy; a [REDACTED] statement; photographs; and copies of text messages that the petitioner claims are from M-W-. As discussed, the automobile insurance policy shows the couple obtained joint coverage in Arizona shortly before they separated and the bank statements show that the couple had a joint bank account in Arizona while the petitioner maintained her own bank accounts in Minnesota. The [REDACTED] statement is in the petitioner's name only. The cellular telephone statements reflect calls to [REDACTED] Arizona, but the statements are issued to the petitioner's first husband, H-K-. The brief one-sentence text messages fail to establish the petitioner's good-faith intentions in entering the marriage and the undated photographs are taken at unspecified locations.

The director determined that the petitioner failed to submit evidence of emotional ties, commingling of resources and shared financial responsibilities. On appeal, counsel asserts that the petitioner's joint bank account with M-W- was created shortly after their second marriage, but it was closed because M-W- was continually overdrawing funds from the account. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit

“testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the petitioner does not provide any detailed, probative information regarding her intentions in marrying M-W-. None of the petitioner’s friends or her mother discuss in probative detail their observations of the petitioner’s interactions with or feelings for M-W- during their courtship or marriage, or otherwise demonstrate their personal knowledge of the relationship. Accordingly, the petitioner has failed to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Battery or Extreme Cruelty*

The record also fails to establish that the petitioner’s husband subjected her to battery or extreme cruelty. In her initial affidavit, the petitioner recounted that M-W- sexually assaulted, verbally abused, pushed and threatened her. She stated that they frequently had arguments about their finances. In response to the RFE, the petitioner reiterated that M-W- sexually assaulted and verbally abused her and he wanted her to financially support him. She also stated that he abandoned, humiliated and controlled her. The petitioner’s brief descriptions of the alleged abuse fail to provide probative, detailed information of specific instances of battery or extreme cruelty.

The petitioner’s mother, [REDACTED] reiterated the petitioner’s claims and stated that the petitioner recounted that M-W- pushed her, threatened deportation and called her names. She did not indicate any first-hand knowledge of the claimed abuse.

In response to the RFE, the petitioner submitted letters from her children from her first marriage, [REDACTED] and [REDACTED]. The petitioner’s children discuss their parents’ divorce, but they do not provide any probative information regarding their knowledge of M-W-’s abuse. The petitioner’s friends discuss a troubled marriage, but their statements also fail to demonstrate that M-W- subjected the petitioner to battery or extreme cruelty. [REDACTED] stated that the petitioner and M-W- had financial issues. [REDACTED] stated that M-W- was verbally aggressive and controlling. [REDACTED] stated that M-W- called the petitioner names. [REDACTED] and [REDACTED] both recounted that they witnessed arguments between M-W- and the petitioner. None of these statements describe instances where the petitioner was ever battered or subjected to threatened violence, psychological or sexual abuse, or other behavior that constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted in response to the RFE, a letter from [REDACTED] an advocate with a social services organization, [REDACTED] Ms. [REDACTED] stated that the petitioner reported that she was “emotionally, physically and financially abused.” Her statement, however, speaks in general terms and fails to provide specific examples of the claimed abuse.

On appeal, counsel submits a second letter from Ms. [REDACTED] and a letter from [REDACTED], a psychiatric clinical nurse with [REDACTED]. In her second letter, Ms. [REDACTED] stated that the petitioner is “an abused woman” and is very depressed. Ms. [REDACTED] indicated that the petitioner reported that she had a violent relationship with her spouse. She diagnosed the petitioner with

anxiety and obsessive compulsive behavior. Neither individual, however, discusses specific behaviors or incidents of battery or extreme cruelty and do not demonstrate a causal connection between the claimed abuse and the petitioner's mental health conditions. Accordingly, the petitioner has failed to demonstrate that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.