



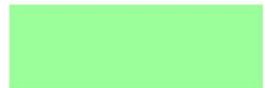
U.S. Citizenship  
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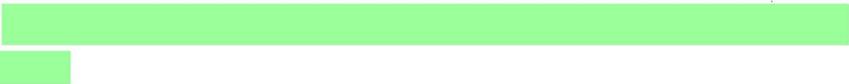
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Office: VERMONT SERVICE CENTER File:



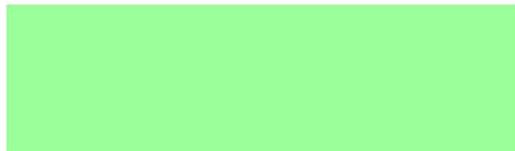
IN RE:

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.

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 AAO on appeal. The appeal will be sustained.

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 resided with her husband and married him in good faith. On appeal, counsel submits a brief.

*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.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Angola, entered the United States on [REDACTED] 2005 on a B-2 visitor visa. The petitioner married her U.S. citizen husband on [REDACTED], 2007 in [REDACTED] Massachusetts. The petitioner filed the instant Form I-360 self-petition on April 18, 2011. The director subsequently issued a request for additional evidence (RFE) of the requisite joint residence and good-faith entry into the marriage. The petitioner timely responded through counsel with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's grounds for denial for the following reasons.

#### *Joint Residence*

The petitioner has established by a preponderance of the evidence that she resided with her U.S. citizen spouse. In the Form I-360, the petitioner stated that she resided with her husband from January 2008 until April 2008 at an apartment on [REDACTED] in [REDACTED] Massachusetts. In her affidavit, dated December 30, 2010, the petitioner indicated that she was living with her sister [REDACTED], prior to and at the time she married her husband in October 2007. She stated that she and her husband began making plans as to where they would live, as at the time her husband resided with his mother in [REDACTED]. The petitioner recounted that she and her husband made arrangements with her sister's landlord to move into the [REDACTED] building, which he also owned, in January. The petitioner stated that she and her husband moved into the [REDACTED] apartment at the beginning of 2008. She indicated that her husband had been laid off from work, and

they did not have a lot of furniture, so her sister and friends helped her furnish the apartment. The petitioner stated that her husband resided with her at the [REDACTED] apartment until April, when he started to spend more time in [REDACTED] at his mother's house.

The petitioner provided an affidavit from her sister, [REDACTED] dated September 22, 2010. In the affidavit, Ms. [REDACTED] indicated that she met with her landlord, the petitioner, and her husband to find an apartment they could afford at a nearby building. Ms. [REDACTED] reported giving the couple some furnishings, including a mattress to "start them off."

The petitioner also provided a copy of the lease for the [REDACTED] apartment, valid January 1, 2008 through January 1, 2009, signed by the petitioner, her husband, and the landlord.

The director found these documents insufficient to establish joint residence and issued an RFE. In response, the petitioner provided a past due satellite television bill bearing her husband's name and the address of the [REDACTED] apartment. The bill is dated May 22, 2010. The petitioner also provided a checking account statement for March 2008 bearing the [REDACTED] address and the names of both the petitioner and her husband. In addition, the petitioner submitted a second affidavit, dated November 26, 2012, in which she indicated that she and her husband found the [REDACTED] apartment in 2007 after they married, but as the apartment was being renovated in November and December, they did not move in until January 2008. She further attested that she and her husband resided there for two years until the marriage "fell apart" in 2010. In response to the RFE, the petitioner also submitted eight affidavits from family members and friends. In the affidavits, the petitioner's family and friends attest to visiting the petitioner and her husband at the [REDACTED] apartment, and attending dinner and birthday parties with the couple at that location.

The director determined that the evidence did not establish that the petitioner resided with her spouse. The director relied substantially on an interview of a U.S. Citizenship and Immigration Services (USCIS) officer with the petitioner's landlord conducted on August 13, 2010, in which the landlord stated that the petitioner's husband did not reside at the [REDACTED] apartment with the petitioner. In addition, the director noted that the satellite television bill did not bear the petitioner's name, and that the checking account statement did not indicate that the petitioner and her husband were sharing joint assets and liabilities in their marriage.<sup>1</sup> The director accorded the affidavits "diminished" value as they were inconsistent with the statement given by the petitioner's landlord to USCIS.

Section 204(a)(1)(A)(iii)(II) of the Act requires that the petitioner demonstrate that she resided with her abusive spouse. The Act defines "residence" as a person's place of general abode, meaning 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 preponderance of the relevant evidence demonstrates that the

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<sup>1</sup> The question of whether the petitioner and her spouse shared assets and liabilities is not relevant to the issue of whether they resided together. Rather, under the instant criterion of the statute, the petitioner must establish that she and her husband shared a residence, i.e. a "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

petitioner resided with her husband. The petitioner's affidavits provide a credible account of her and her husband's joint residence. They are supported by notarized affidavits from acquaintances, and bills indicating that they were both listed on accounts at the [REDACTED] address prior to their final separation. The director discounted the affidavits as inconsistent with the petitioner's landlord's statement to USCIS. However, the landlord was interviewed in August 2010, over two years after the petitioner ceased to reside with her husband. The petitioner has credibly represented that she and her husband initially resided together for a brief period before the relationship began to deteriorate. In her December 30, 2010 affidavit, the petitioner recounted intermittent separations and reconciliations with her husband over the two year period during which she resided at the [REDACTED] apartment, and later after she moved back in with her sister. In the affidavit, the petitioner indicated that in the spring of 2009, the relationship had so deteriorated that she filed for divorce, but subsequently withdrew the petition upon her husband's claims that he was "a new person and that he had changed." The Complaint for Protection from Abuse, which notes the petitioner's dismissed divorce proceedings, and her sister's affidavit support the petitioner's statements regarding the intermittent nature of relationship with her husband. The statute does not require the petitioner to establish that she resided with her spouse for the entirety of a lease, or the marriage. Rather the petitioner must demonstrate that resided for some period of time with her U.S. citizen spouse.

When viewed in the aggregate, the relevant evidence shows 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 petitioner has also established by a preponderance of the evidence that she entered into her marriage in good faith. In her first affidavit, dated December 30, 2010, the petitioner recounted how she met her husband through a family member. She described their first meeting and subsequent outing to the beach. The petitioner explained that although she was beginning to learn English, she and her husband communicated in Portuguese since his parents were Portuguese. She discussed their courtship, engagement, wedding preparations, marriage ceremony, and celebration. She also described their marital residence and shared activities during the happy period at the beginning of their marriage.

In her December 30, 2010 affidavit the petitioner also stated that she filed for divorce in early 2009, after her husband became abusive. The petitioner recounted how her husband refused to assent to the divorce, and a month before the divorce was to become final, he apologized to the petitioner. In the affidavit, the petitioner indicated that she forgave him because she loved him and she believed that things would be different. At her husband's request, the petitioner withdrew the divorce petition. The petitioner submitted a Complaint for Protection from Abuse that confirms the dismissal of the divorce proceedings.

In support of the initial Form I-360 submission, the petitioner provided an affidavit from her sister. In the affidavit, Ms. [REDACTED] described the petitioner's and her husband's courtship, which took place while the petitioner resided in Ms. [REDACTED] apartment. She stated that in the summer of 2007, the couple attended several parties, including two weddings. She noted that after the second wedding they began to think about marriage themselves. She indicated that the couple spent their wedding night at a

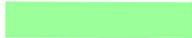
hotel in [REDACTED], which afforded them more privacy than that available in her home. Ms. [REDACTED] also discussed helping the couple find an apartment so that they could move in together. The petitioner provided numerous photographs of her wedding, and several additional photographs of her and her husband on various outings. In addition, the petitioner submitted an executed lease for the [REDACTED] apartment, signed by both her and her husband.

In response to the RFE, the petitioner provided a satellite television bill in the name of the petitioner's husband for the [REDACTED] apartment, and a joint checking account statement for March 2008. The petitioner also submitted several notarized affidavits from friends and family members. The affidavits attest to meeting the petitioner's spouse during the couple's courtship, attending the petitioner and her husband's wedding, and attending dinners and other events at the petitioner's and her husband's apartment.

In her decision, the director found the lease, photographs, and personal statements to be insufficient evidence of the petitioner's good-faith entry into the marriage. The director noted that the additional evidence submitted in response to the RFE did not demonstrate comingling of marital funds or payment of joint expenses. The director also accorded diminished weight to the eight affidavits from the petitioner's family and friends because they were inconsistent with a statement made by the petitioner's landlord.

*De novo* review of all of the relevant evidence establishes the petitioner's good-faith entry into the marriage. The director erred in discounting a substantial portion of the relevant evidence as inconsistent with a brief statement made by the petitioner's landlord that the petitioner's husband did not reside at the Central Square apartment. The record shows that at the time the landlord was interviewed, the petitioner's husband had abandoned her for a second time after only a brief period of reconciliation. The petitioner's December 30, 2010 affidavit credibly details the couple's difficulties that commenced early in the marriage due to her husband's abuse, and the petitioner's husband's long absences from the marital home.

The director indicated that the petitioner also submitted photographs, a personal statement, supporting affidavits, and a joint lease, but discounted this evidence in light of the landlord's claim. The director correctly noted that the checking account statement submitted for March 2008 does not establish comingling of marital funds or joint payments. However, 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, the petitioner credibly described her husband's financial irresponsibility and depletion of their bank account. She also provided a detailed, credible statement describing her courtship, wedding, shared residence and other experiences with her husband. Affidavits, photographs, and other joint documentation also support the petitioner's claims. The petitioner has therefore established by a preponderance of the evidence that she 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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.