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

[redacted]

Date: SEP 12 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:

[redacted]

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 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 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 United States citizen.

The director denied the petition based on the petitioner's failure to establish that she has a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based on this qualifying relationship, that she resided with her U.S. citizen spouse, and that she entered into the marriage with him in good faith.

On appeal, the petitioner, through counsel, submits a brief and copies of previously submitted documents.

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 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)(1), which states, in pertinent part:

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
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> * * *
>
> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

(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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(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, a citizen of Nigeria, entered the United States on August 3, 2002 on a nonimmigrant visa as the fiancée of V-O-[1], a U.S. citizen. She filed the instant Form I-360 self-petition on January 18, 2012 based on a common law marriage with V-O-. Upon review of the initial submission, the

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

director issued Requests for Evidence (RFEs) of a qualifying relationship with a U.S. citizen, eligibility for immigrant classification based on the relationship, shared residency with the petitioner's spouse and good-faith entry into marriage, among other issues. The petitioner responded with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision. The appeal consists of a Form 1-290B, Notice of Appeal; a brief; and copies of previously submitted documents.

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, including the documents provided 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.

Qualifying Relationship and Eligibility for Immigrant Classification

To establish eligibility under section 204(a)(1)(A)(iii)(I) of the Act, the petitioner must show that she has a qualifying relationship with a U.S. citizen spouse, and that she is eligible to be classified as an immediate relative of that person under section 201(b)(2)(A)(i) of the Act.

The petitioner seeks to establish eligibility under these criteria based a common law marriage in Texas. Texas Family Code section 2.401 states in pertinent part:

> (a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:
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> > (1) a declaration of their marriage has been signed as provided by this subchapter; or
> >
> > (2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.
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> (b) If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.

Tex. Fam. Code Ann. § 2.401 (West 2006).

The petitioner has not provided a signed declaration of marriage, and thus seeks to establish the validity of her marriage pursuant to a marriage agreement under Texas Family Code section 2.401(a)(2). To so establish, the petitioner must demonstrate that (1) she and V-O- made an agreement to be married; (2) after the agreement they resided together in the state of Texas; (3) that they represented to others that

they were married; and (4) because the marriage was not established through any proceeding within two years after the couple's separation, the petitioner must rebut the presumption that she and V-O- did not agree to be married. The petitioner filed the Form I-360 self-petition on January 18, 2012, nine years after the petitioner stated that she ceased to reside with V-O- in January 2003. The director correctly found that the instant administrative proceedings commenced over two years prior to the date the petitioner claimed that she separated from her spouse. Thus, the petitioner must overcome the presumption that the couple did not enter into an agreement to be married.

The evidence of record does not establish any of the three required elements of Texas Family Code section 2.401(a)(2). Regarding the required agreement to be married, in response to the first RFE, the petitioner submitted a personal affidavit, dated June 27, 2012, in which she recounted that V-O- told her that marriage in a court was not required in Texas. She stated that he claimed that they could "simply inform people that [they] were married," but she did not specifically describe an agreement with V-O- to be married. On appeal, counsel asserts that direct evidence of an agreement to marry is not required, as it may be proven by circumstantial evidence. However, no direct or circumstantial evidence of an agreement was provided beyond the brief and insufficient statements in the petitioner's affidavit.

The relevant evidence also does not establish that the couple resided together in Texas. In her affidavit, the petitioner recounted that when she arrived in the United States, she lived with V-O- in Georgia. The petitioner asserted that in October 2002, V-O- informed her that they would be moving to Houston. The petitioner indicated that they "eventually moved to Houston," but did not provide the date of their move.[2] While she discussed V-O-'s abusive behavior after they moved to Houston, the petitioner did not discuss the couple's shared residence there. Further, the petitioner's statements regarding her departure from Texas in December 2002 conflict with her claim on the Form I-360 self-petition that she resided with V-O- in Houston until January 17, 2003.[3] Her affidavit is thus insufficient to establish that the couple resided in Texas.

Regarding the requirement that the couple represent themselves to others as married, the petitioner stated in her affidavit, "In Texas, we continued to hold ourselves out as husband and wife." She asserted that they "told every person that [they] knew and met that [they] were married." However, it is not apparent from the petitioner's statement that she knew or met anyone while in Houston. The petitioner indicated that in Texas, V-O- was very controlling and would not let her leave the house on her own or talk to anyone on the phone. She did not mention any interactions with other individuals,

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[2] While the petitioner did not provide a date for the move, her assertion that V-O- informed her in October 2002 that they would be moving to Texas, and her statement that they "eventually" moved (i.e., not immediately), appear to conflict with her earlier claim in the Form I-360 self-petition that she entered into a common law marriage with V-O- on October 1, 2002 in Houston.

[3] The petitioner stated that V-O- departed Texas for Atlanta in December 2002, and as he did not return as expected, she "left to join him in Atlanta." She recounted, in detail, an incident between her and V-O- that occurred in Atlanta prior to Christmas in 2002. Accordingly, in her affidavit, the petitioner claimed to last reside with V-O- in Georgia. This account is inconsistent with the petitioner's statement on the Form I-360 self-petition that she last resided with V-O- in Houston in January 2003.

nor did she provide affidavits or other evidence to support her assertion that that the couple held themselves out as husband and wife.

The director issued a second RFE advising the petitioner that a valid Texas common law marriage had not been established and requested evidence of the petitioner's qualifying relationship. However, the petitioner did not provide additional evidence on this issue. Instead, counsel submitted a brief in which he asserted that the petitioner's statement in her affidavit that she resided with V-O- in the state of Texas is sufficient to prove a common law marriage under Texas law. As discussed above, joint residence in Texas is only one of the three elements required to establish a valid common law marriage in Texas. *See* Tex. Fam. Code Ann. § 2.401(a)(2) (West 2006). Upon review of the entire record, the petitioner has not established that she was married to V-O- under Texas law. The discrepancies between the petitioner's affidavit and other information in the record, and the minimal information in her affidavit regarding the required elements of a common law marriage in Texas render her affidavit alone insufficient to support the petitioner's claim of a qualifying relationship. *See* § 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (stating that USCIS will consider any credible evidence, but "determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]"). On appeal, the petitioner has not provided any additional evidence to demonstrate the existence of a qualifying relationship.

Accordingly, the petitioner has not established that she has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

Joint Residence

We find no error in the director's determination that the petitioner failed to establish that she resided with V-O-. As the petitioner has not demonstrated that she was married to V-O-, she necessarily cannot establish that she resided with him during their marriage. *See* section 204(a)(1)(A)(iii)(II)(dd) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(dd) (requiring residence with the abusive "spouse"). However, even if, through other means, the petitioner had been able to establish a valid marriage with V-O-, the evidence of record is nonetheless insufficient to demonstrate that they resided together. The petitioner stated on the Form I-360 that she resided with V-O- from August 2002 until January 2003, but did not initially submit any evidence in support of this claim. In her affidavit submitted in response to the director's first RFE, she stated that she arrived in the United States in August 2002, and resided with V-O-, his son, and the nanny at a home in Georgia until they moved to Houston. The petitioner provided few details regarding her residence in Georgia with the petitioner, beyond V-O-'s abusive behavior. As explained in the preceding section, her affidavit also provided insufficient information to establish that the couple resided together in Texas, and she did not submit any other relevant additional evidence of their marital residences.

In her affidavit, the petitioner indicated that she travelled to Georgia on her own in December of 2002 after V-O- did not return to Texas. She did not indicate if she returned to the house in or to another residence. The petitioner asserted that she did not have a lease or mortgage in her name because she moved in to V-O-'s existing residence. She further stated that V-

O- did not add her to the car insurance policy because she did not drive, and that the couple had already separated before they filed their 2002 taxes. She explained that she does not have any documents from their time in Houston due to the brevity of their stay.

In the second RFE, the director requested additional evidence of the petitioner's and V-O-'s joint residence, and provided examples of possible documents to be submitted, including affidavits of friends or family members that could verify that the petitioner resided with V-O-. In response to the second RFE, counsel stated that the couple was "in transit" during their marriage, and were unable to accumulate any documentation. Counsel asserted that the couple resided with family members in Texas; however, the petitioner herself did not state who else, if anyone, the former couple resided with in Texas.

The director correctly determined that the petitioner's brief statements were insufficient to establish that she resided with V-O-. On appeal, counsel again speculates that the couple was living "with relatives" while in Houston, and thus did not have any documentation in their names. While the petitioner has explained her lack of a lease or mortgage from her marital residence in Georgia, she has provided no supplemental affidavit on appeal describing her residence with V-O- in Georgia or Texas. The petitioner also did not provide any supporting statements from other individuals, such as the woman from the petitioner's area of Nigeria, or who took in the petitioner after she left V-O-, as reported in the petitioner's affidavit.

While the petitioner has explained her lack of some relevant documentation, she has not provided consistent and probative information sufficient to establish that she and V-O- resided together. Accordingly, the record does not establish that the petitioner resided with V-O-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

The petitioner has not demonstrated that she and V-O- had a valid marriage, and therefore necessarily cannot establish that she entered into a marriage with him in good faith. However, even if the petitioner had established that she did enter into a marriage, the evidence of record would not demonstrate that she entered into such marriage in good faith.

The director's ultimate conclusion that the petitioner did not establish her good-faith entry into a marriage was correct. However, to the extent that the director relied on the petitioner's failure to submit documents from the marriage, such as joint insurance policies, bank statements, or other evidence of shared financial responsibilities, such 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 response to the director's first RFE, the petitioner submitted six photographs of her and V-O- in Nigeria, before the petitioner came to the United States and her June 27, 2012 affidavit. The petitioner described being unsure about the relationship, stating that when V-O- told her that he had filed a fiancée petition for her, she thought it was "too soon." The petitioner stated that V-O- was "in love" and "could not wait for [them] to reside as husband and wife." However, the relevant intent in this matter is that of the petitioner. The petitioner stated only that she was "looking forward to joining [V-O-] in the United States." Her intent in joining him in the U.S. has not been established.

On appeal, counsel contends that the bona fides of the petitioner's marriage to V-O- were established upon approval of her fiancée visa. Counsel asserts that the petitioner's intent was assessed by the consulate prior to issuing the visa, and that had the petitioner adjusted status in the U.S. after marrying V-O-, the bona fides of the relationship would not have been revisited. While evidence submitted with a fiancée visa application may be relevant to a determination of the self-petitioner's good faith marriage under section 204(a)(1)(A)(iii) of the Act, no such evidence is before us. The petitioner provided a copy of the first page of V-O-'s fiancée visa petition, which was approved, but did not provide any of the underlying evidence to be considered. The issuance of a fiancée visa, without more, is not sufficient to establish the petitioner's good-faith entry into the marriage under section 204(a)(1)(A)(iii)(I)(aa) of the Act.

As previously noted, the petitioner did not establish that she entered into a valid marriage with V-O-, and is therefore precluded from demonstrating a good-faith entry into that marriage. However, even if a valid marriage had been established, when viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with V-O- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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 has a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based on this qualifying relationship, that she resided with her U.S. citizen spouse during their marriage, and that she entered into the marriage with him in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these four 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.