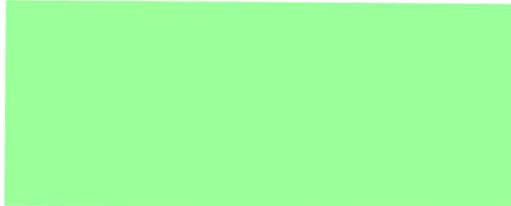




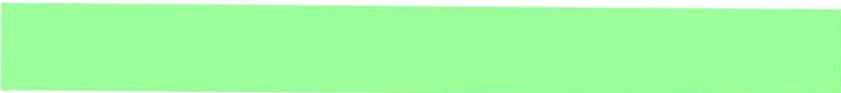
U.S. Citizenship
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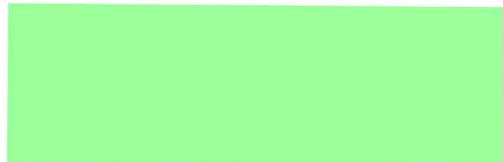
Date: **SEP 17 2014**

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:

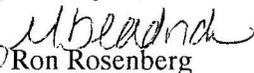


INSTRUCTIONS:

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 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 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner resided with her spouse and entered into the qualifying relationship in good faith.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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 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 explained further 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:

(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 was born in Russia and claims that she last entered the United States without inspection on October 6, 2006. She married her spouse, a U.S. citizen, on January 2, 2004, in Las Vegas, Nevada. She filed the instant Form I-360 petition on April 22, 2011. The director subsequently issued two Requests for Evidence (RFE). The first RFE requested clarification of the petitioner's current marital status and prior joint residence with her spouse, and the petitioner timely responded. The second RFE requested evidence of the petitioner's good moral character. The petitioner responded with additional evidence. The director ultimately found that the petitioner had not established that she resided with her husband and entered into the marriage in good faith. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. *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, and we will dismiss the appeal for the following reasons.

Good-Faith Entry into Marriage

On the Form I-360 petition, the petitioner asserted that she lived with her former husband from January 2004 to November of 2008. In her initial affidavit, the petitioner described her courtship, explaining that she and her spouse met at an orchid show in New York City in January of 2002 and began to see each other. She described their courtship, various dates, engagement, and wedding. She described her desire to stay with her husband even as he abused her, her attempts to escape the abusive relationship, and their subsequent reconciliations. The petitioner included affidavits from friends who knew the petitioner and her spouse before and after their marriage. They described the petitioner's relationship with her spouse and attested to their contemporaneous knowledge of the petitioner's courtship, engagement, and marital relationship with her husband.

The director issued an initial RFE, but did not seek additional evidence relating to the petitioner's good faith entry into marriage. In response to the initial RFE, the petitioner submitted an affidavit in which she described her relationship with her spouse in more detail. The director's second RFE and the petitioner's response to it related solely to her good moral character.

On appeal, the petitioner provides a new affidavit and brief and asserts that she has satisfied the applicable standard of proof by a preponderance of the evidence. She provides a signed statement from her spouse as part of dissolution proceedings in which he acknowledges that he and the petitioner "entered the marriage with the intention of a long-term relationship and cohabited, but the marriage deteriorated and is now irretrievably broken." The petitioner has credibly recounted her intentions at the time she married her spouse and how she remained committed to the marriage until she finally left him because of the abuse. Accordingly, the petitioner has established by a preponderance of the evidence that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act and the director's contrary determination shall be withdrawn. Nevertheless, the petitioner has not established her eligibility for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with her spouse. On the Form I-360, the petitioner stated that she resided with her spouse from January 2004 to November 2008, and that their last joint address was an apartment on Newark Avenue in Jersey City, New Jersey. The petitioner provided a personal affidavit in which she stated that she and her husband first lived in an apartment at [REDACTED] in New York, New York. She advised that her husband told her that he could not put her name on the lease because she had no credit history. In March of 2004 they moved to an apartment in Jersey City, New Jersey. After a separation in June of 2004 and reconciliation in October of 2006, they moved back the apartment at [REDACTED] in New York City. The petitioner did not describe

either apartment. In her affidavit, the petitioner asserted that as part of his control over her, her spouse refused to put her name on leases, utility bills, or to open a joint bank account, and file joint tax returns. She provided affidavits from several friends, but only [REDACTED] listed the shared marital address in Jersey City or claimed to have visited the petitioner and her husband at that apartment. Although Mr. [REDACTED] stated that he and his wife visited the petitioner and her spouse at their apartment for dinner on occasion, he did not describe any particular visit to the petitioner's marital home or include any other probative details regarding the shared residence. The petitioner provided a psychiatric evaluation in which the psychiatrist stated that the petitioner told him she lived with her husband in New York and New Jersey, but he did not indicate that he had any personal knowledge of their joint residence.

The petitioner provided several hospital records documenting her husband's abuse from 2003 until 2007, and additional documents relating to her good moral character; however, none of the documents lists the two marital addresses she claims to have shared with her husband. In fact, the documents list other locations during the periods she claimed to have lived with her spouse from 2004 to 2008. For example, the April 6, 2004 and January 31, 2007 hospital records reflect her home address was on [REDACTED] in New York City, and that she was single rather than married. The March 23, 2007 hospital records reflect that she was living at an address on [REDACTED] in New York City, and the copy of the final disposition for her New York arrest for prostitution shows that she was living on [REDACTED] New York on December 29, 2007. The petitioner also included a bank statement showing she opened an account on October 9, 2008; however, it lists only her name and the Jersey City address, whereas the petitioner stated in her affidavits that she and her husband lived on [REDACTED] in New York City after October of 2006. Accordingly, this bank statement does not establish that the petitioner resided with her spouse.

In response to the first RFE, the petitioner submitted a second affidavit in which she reasserted that she was unable to provide evidence such as bank statements or other financial records to establish her joint residence with her husband because he controlled her by keeping her name off any documents. She stated that she provided her [REDACTED] address to the hospital in her initial May 2003 visit when she was single, but that the hospital failed to request an updated address from her in subsequent visits. The petitioner asserted that when she provided the hospital the [REDACTED] address in 2007, due to her spouse's abuse, she intended to stay with a friend at that address but ultimately remained with her husband in Jersey City. The petitioner did not include any additional information about the shared marital residences in New York or New Jersey.

The petitioner also provided a second affidavit from her friend [REDACTED] and an affidavit from [REDACTED] an acquaintance. Mr. [REDACTED] listed both the [REDACTED] and Jersey City addresses, and asserted that he and his wife visited the petitioner and her spouse at these addresses but he did not describe the apartments or otherwise provide any substantive information regarding the marital residence. Mr. [REDACTED] stated that he met the petitioner through Mr. [REDACTED] and claimed to have attended their engagement party at the [REDACTED] apartment; however, he did not describe their residence. Mr. [REDACTED] also stated that he "bumped into" the petitioner at a Starbucks in April 2004, and when he asked if she and her husband were still in [REDACTED] she told him that

NON-PRECEDENT DECISION

Page 6

she and her husband “were thinking of moving to Jersey City.” This conflicts with the petitioner’s claim to have moved to Jersey City in March of 2004.

In response to a second RFE requesting evidence of good moral character, the petitioner provided an arrest record for prostitution, a court disposition showing the charge was subsequently dismissed, and an affidavit with an explanation as to why the arrest record did not reflect the address she claimed to have shared with her former husband. Specifically, the arresting officer’s report indicates that he arrested the petitioner “inside of [REDACTED]” on December 29, 2007, at 2:30 pm after she offered the undercover officer “manual stimulation to the penis in exchange for \$200.” According to the arrest report and final court disposition, the petitioner listed her home address on [REDACTED] New York. In her second affidavit, the petitioner suggested that she was picked up by the officer as a result of a misunderstanding. According to the petitioner, she was actually walking home from a party with two Ford models when the undercover office drove up and asked whether they would like a “happy ending.” Because she was so unhappy with her marriage, she asserted that she immediately responded in the affirmative, not understanding the officer’s meaning. She contended that the officer took her to one of the other girl’s apartment to collect identification and arrested them all at that location. The petitioner claimed when asked to provide her home address, she told the officer the first one that came to mind, which happened to be her former address in [REDACTED] however, the petitioner had most recently lived at [REDACTED] in [REDACTED] prior to her marriage, not [REDACTED]. Further, the petitioner’s explanation about the circumstances of the arrest is inconsistent with other detailed information in the arresting officer’s report, including the location of the arrest, the nature of the services she allegedly offered to him, and the amount of compensation that he claimed she sought.

On appeal, the petitioner submits a third personal affidavit in which she again explains that she has no evidence of her joint residence with her former spouse because he refused to put her on their leases, a joint bank account, or on joint tax returns. In her brief, she asserts that the “lack of financial corroboration or commingling of assets and debts is part and parcel of the emotional abuse.”

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “affidavits or any other type of relevant credible evidence of residency may be submitted.” 8 C.F.R. § 204.2(c)(2)(i). In this case, the documents and affidavits submitted by the petitioner are inconsistent and detract from the credibility of her claimed joint residence with her spouse. She claimed to have lived with her spouse at two addresses, but none of her relevant medical records or arrest records reflects these addresses. Instead, the medical records and arrest report reflect that she listed three addresses unrelated to the two apartments she claimed to share with her husband. In addition, the affidavits of the petitioner and her friends lack any substantive description of the petitioner’s residence with her husband. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

As an additional matter, the petitioner has not established her good moral character.¹ Primary evidence of a self-petitioner's good moral character is his or her affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner's residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v).

The petitioner filed the instant petition on April 22, 2011. The petitioner provided an affidavit in which she asserted she is a person of good moral character, and addressed her 2007 arrest in New York, which resulted in a dismissal of charges. She also provided police clearances for the states of New York and Florida showing no other offenses. However, with her petition she indicated a New Jersey address and provided a bank statement dated December 23, 2010, which shows that she opened a checking account on October 9, 2008, and advised the bank that she lived at the apartment in Jersey City, New Jersey. The date of October 9, 2008 falls within the three-year period before the filing of the petition, but the petitioner failed to provide the required clearances or background check from New Jersey for this period. Accordingly, the petitioner has not established by a preponderance of the evidence that she has good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she resided with her spouse and that she has good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).