



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 22 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:

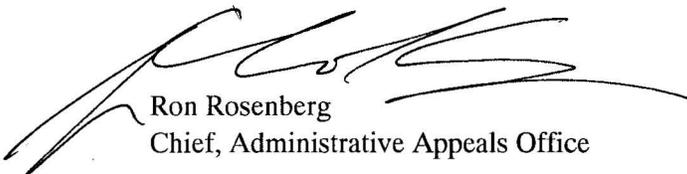
SELF-REPRESENTED

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 acting 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 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, resided with her husband, and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits 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).

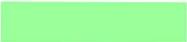
Section 204(a)(1)(J) of the Act further states, in pertinent part:

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:

(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.

* * *

(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 is a citizen of the Dominican Republic who entered the United States on September 28, 1994, as a nonimmigrant visitor. The petitioner married J-G-¹, a U.S. citizen, on May 5, 1997, in ██████████ New York. The petitioner filed the instant Form I-360 self-petition on May 3, 2007. The director subsequently issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) the decision for failure to establish the petitioner's good-faith entry into her marriage, residence with her husband, and the requisite battery or extreme cruelty. The petitioner, through former counsel, responded to the RFE and NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely filed an 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. The petitioner'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

The petitioner failed to establish that she resided with J-G- during their marriage. The petitioner stated on her Form I-360 that she resided with J-G- from May of 1997 to April of 2006. The relevant evidence in the record contains: the petitioner's affidavits; affidavits from friends and family; correspondence addressed solely to the petitioner; correspondence addressed solely to J-G-; 1998 and 1999 Internal Revenue Service (IRS) federal income tax returns completed as "married filing jointly;" unlabeled photographs of the petitioner and J-G-; and a letter from the apartment superintendent. The letters addressed to J-G- are mostly dated after he no longer resided with the petitioner. The federal income tax returns are undated, unsigned, and do not contain the correct marital address. The unlabeled photographs show only that the petitioner and J-G- were pictured together on their wedding day and two other unspecified occasions at locations not identified as the claimed marital residence.

Despite these deficiencies, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). In her first affidavit, the petitioner stated that after their wedding ceremony, she and J-G- moved in with her parents so that they could save money for their own place. The petitioner briefly listed activities that they enjoyed doing together but she did not describe her shared residence with J-G- in any probative detail. She did not, for example, describe their apartment, shared belongings, and residential routines or provide any other substantive

¹ Name withheld to protect the individual's identity.

information sufficient to demonstrate that she resided with J-G- after their marriage. The petitioner stated that due to the claimed abuse, she reported J-G- to the police in May of 2005 and subsequently obtained a permanent protective order. A review of the record shows that the New York Family Court issued an order of protection on August [REDACTED] that remained in effect to August [REDACTED]. The order required that J-G- stay away from the petitioner, her residence, and her place of employment. The petitioner did not explain how J-G- continued to reside with her through to April of 2006 as stated in her self-petition after she obtained this order of protection. In her second affidavit submitted in response to the RFE, the petitioner reiterated that J-G- resided with her from May 1997 to April of 2006 and that although he would leave for several days or weeks at a time, he did not have any other address. Again, the petitioner did not explain the discrepancy regarding the dates J-G- resided with her and the dates that the order of protection remained in effect. In her third affidavit submitted in response to the NOID, the petitioner stated that she had been estranged and no longer living with J-G- since May of 2005 but listed April 2006 on her self-petition as their last date of residence because that was the last time that the two were intimate. She attributed the discrepancy to a cultural bias. The petitioner did not further explain this difference or describe her shared residence with J-G- in any probative detail.

In their initial joint affidavit, [REDACTED] stated that they are close personal friends of the petitioner and visited the petitioner and J-G- at their home too many times to count. They stated that the petitioner and J-G- shared in all of the expenses until J-G- began doing drugs. They did not further describe any specific residential visits, observations, or otherwise provide probative details regarding the couple's living arrangements. In response to the RFE, [REDACTED] submitted separate affidavits restating the information from the joint affidavit and did not add any substantive information about the petitioner and J-G-'s marital residence. The petitioner's parents, [REDACTED] and [REDACTED] submitted two joint affidavits. In their first joint affidavit, Mr. [REDACTED] stated that they resided with their daughter for the greater part of her marriage to J-G-. They further stated that the petitioner and J-G- helped pay for expenses associated with their matrimonial domicile. In their second affidavit, the petitioner's parents stated that they witnessed many fights that occurred in the home as well as many good moments. The petitioner's mother also submitted two brief letters stating that the petitioner and J-G- resided with her. Neither the petitioner's mother nor father further described the petitioner and J-G-'s residential routines or provided any other substantive information sufficient to demonstrate that the petitioner resided with J-G- after their marriage. Additionally, the petitioner's sisters, [REDACTED] and [REDACTED] submitted affidavits attesting to the petitioner's joint residence with J-G-. Their affidavits are very similar and likewise do not provide any probative details regarding the couple's living arrangements. The letter from building superintendent [REDACTED] briefly stated that the petitioner and J-G- resided with [REDACTED] from May 1997 to April 2006. This letter is inconsistent with the petitioner's affidavits that J-G- no longer resided at this address after May of 2005.

On appeal, the petitioner fails to resolve these inconsistencies and introduces yet another discrepancy into the record. The petitioner submits another personal statement and a second letter from [REDACTED]. On appeal, the petitioner argues that she shared a common residence and domicile with

J-G- and that the director erred in focusing on minor inconsistencies. However, the second letter from [REDACTED] states that the petitioner and J-G- resided at their marital address from January 1997 to January of 2006. These dates are inconsistent with his previous letter as well as the petitioner's assertions that J-G- resided with her from May of 1997 to May of 2005. Accordingly, the evidence in the record is insufficient to establish by a preponderance of the evidence that the petitioner resided with her husband after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. The record contains: the petitioner's affidavits; photographs of the petitioner and J-G- at their wedding and on two unidentified occasions; affidavits from family and friends; bank statements addressed solely to the petitioner; and 1998 and 1999 Internal Revenue Services (IRS) federal income tax returns completed as married filing jointly. The photographs show that the petitioner and J-G- were pictured together at their wedding and on two other unspecified occasions. The bank statements are only addressed to the petitioner and do not demonstrate that both the petitioner and J-G- had access to the account or otherwise shared fiscal responsibilities. The 1998 tax return is unsigned and undated and there is no evidence that it was filed with the IRS. The 1999 tax return, though bearing an IRS receipt stamp, was also unsigned by either the petitioner or J-G-.

Nonetheless, 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." See 8 C.F.R. § 204.2(c)(2)(vii). In the petitioner's first affidavit, she stated that she was introduced to J-G- in January of 1997 by a mutual friend at the place where she worked. The petitioner stated that they started dating and briefly listed activities that she and J-G- enjoyed doing together. She recounted that J-G- proposed to her after four months of dating and that they were married on May [REDACTED]. The petitioner did not further describe how she met her husband, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. In her second affidavit, the petitioner recounted that she had a wonderful relationship with J-G- who was exciting and romantic. She stated that after their wedding ceremony, they had a small get together where they took photographs and then had another get together with food and drinks later that night. The petitioner recounted that she and J-G- left the following day for [REDACTED] New Jersey, not on the same day as the wedding ceremony as erroneously stated by J-G- at their visa petition interview on August 10, 2000. However, in her third affidavit, the petitioner stated that she never went to [REDACTED] New Jersey with her husband and that this was a lie that he told at the visa petition interview. She further asserted that it was unfair of the director to use her husband's false testimony against her. The petitioner did not explain, however, why she stated in her second affidavit that she went to [REDACTED] with J-G- the day after the wedding ceremony. Further, the petitioner did not add any probative information establishing that she married J-G- in good faith. The affidavits from her family and friends spoke predominantly of the claimed abuse and did not provide substantive information detailing the petitioner's relationship with J-G- and her intentions upon marrying him.

On appeal, the petitioner submits a statement and notarized letters from friends [REDACTED]. In his letter, Mr. [REDACTED] states that he attended the petitioner and J-G-'s wedding and reception. He states that he was happy for them but that the petitioner was more committed to the marriage than J-G-. He further states that he lent money to J-G- so that J-G- could take the petitioner to [REDACTED] for their honeymoon but that J-G- used the money for something else and they never went. [REDACTED] both state that the petitioner and J-G- seemed very happy at their wedding ceremony and reception. Both Ms. [REDACTED] and Mr. [REDACTED] reference the planned [REDACTED] trip stating that the trip plans fell through because J-G- spent the money elsewhere. The petitioner's friends did not provide substantive information sufficient to demonstrate that the petitioner married J-G- in good faith. Additionally, the letters from Mr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] contradict the petitioner's statements in her second affidavit regarding the trip that she took to [REDACTED] with J-G-, thereby detracting from their evidentiary value.

In her letter, [REDACTED] states that she has known the petitioner since 2003 when they were coworkers. She states that her boyfriend at the time was friends with J-G- and mentioned to her that J-G- was interested in the petitioner. Ms. [REDACTED] states that J-G- bought the petitioner flowers all of the time and proposed marriage to the petitioner in front of all of them. Mr. [REDACTED], also a former coworker of the petitioner who has known her for about ten years, states on appeal that he witnessed the beginning of J-G- and the petitioner's relationship and later attended their wedding. Ms. [REDACTED] and Mr. [REDACTED] statements regarding that they have known the petitioner since 2003 and were present when J-G- and the petitioner began dating are inconsistent with the petitioner's statements that she met and began dating J-G- in 1997, six years earlier. Further, neither friend provided any additional, probative information regarding their personal knowledge of the petitioner's relationship with J-G-. A full review of the evidence submitted below and on appeal fails to establish the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The petitioner failed to establish that J-G- subjected her to battery or extreme cruelty and the evidence submitted below and on appeal fails to overcome this ground for denial. The Domestic Incident Report (DIR) dated May 14, 2005, reflects that the petitioner filed a report with the police stating that her ex-boyfriend who she had been living with threatened her with bodily harm. The DIR listed J-G-'s address as unknown although the petitioner claimed in her third affidavit that J-G- resided with her until that incident. The petitioner did not report any injuries or give a statement of allegations. The DIR states that J-G- was not present at the time the report was made. A copy of the DIR and a domestic violence notice was given to the petitioner and no arrest or other action was taken at that time. There were no additional details in the DIR regarding any specific incidents of abuse. Two days after this incident, the petitioner filed for a temporary order of protection claiming that J-G- pushed her, tried to hit her, and threatened her. The New York state family court issued a two-year protective order upon default because J-G- was not present at the hearing. The DIR dated October 2, 2006, reflects that the petitioner filed a report with the police stating that a week earlier, on September [REDACTED] J-G- approached the petitioner wanting to talk and pulled her hair. She stated that she was able to free herself and ran upstairs to her home. The petitioner stated that she called the police but J-G- had already left. She further stated that J-G- called her on October 2, 2006 and threatened her. No arrest was taken at the

time and there were no additional details in the DIR regarding these incidents or other specific incidents of abuse.

The letters provided by the Crime Victims Board, [REDACTED] and Dr. [REDACTED] likewise did not provide any additional evidence regarding the claimed abuse. The letter from the [REDACTED] stated that upon review of evidence submitted, the petitioner was an innocent victim of a crime on October 2, 2006. The letter from the [REDACTED] stated that the petitioner has been receiving spiritual guidance and counseling due to domestic violence in her marriage. Both of these letters are based on statements provided by the petitioner and do not add any probative details regarding the claimed abuse. In his three-sentence letter dated September 15, 2006, Dr. [REDACTED], stated that he is treating the petitioner for Posttraumatic Stress Disorder and Major Depression due to being the victim of domestic violence from her husband but he did not describe the violence or otherwise state the basis for this determination. In his form letter, Dr. [REDACTED] stated that he saw the petitioner on May 26, 2005, and listed the nature of her illness or injury as “battered wife - anxiety depression” but also did not describe any battery or otherwise state the basis of this determination.

In her psychological evaluation, Ms. [REDACTED] stated that at their meeting on January 31, 2007, the petitioner reported feeling depressed as a result of the dissolution of her abusive marriage. Ms. [REDACTED] stated that the petitioner described her marriage as stable for two years before problems began to surface and she was physically, emotionally, and sexually abused by her husband. The petitioner further reported that J-G- left the household six months after the abuse began. This report is inconsistent with the petitioner’s affidavits where she stated that J-G- became abusive at the end of 2000 and continued to be abusive until May of 2005 when he left. While we do not question Ms. [REDACTED] professional expertise, her assessment conveys the petitioner’s statements which contradict the petitioner’s account submitted with her Form I-360 self-petition and provides no further, substantive information regarding the claimed abuse. Ms. [REDACTED] supplemental letter regarding the petitioner’s subsequent visit over a year and a half later on September 17, 2008, does not discuss the petitioner’s claims of spousal abuse but instead focuses on the petitioner’s relationship with her mother.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “evidence of abuse may include... other forms of credible relevant evidence.” *See* 8 C.F.R. § 204.2(c)(2)(iv). Here, the petitioner submitted three affidavits asserting that she was abused but without providing probative details regarding specific incidents of battery or extreme cruelty and the director correctly determined that they were not reliable to make up for the deficiencies of the record. The submitted affidavits from the petitioner’s family and friends likewise did not provide any probative details regarding specific incidents of abuse and the director correctly determined that these affidavits were insufficient to demonstrate that J-G- subjected the petitioner to battery or extreme cruelty.

On appeal, the petitioner asserts her credibility and states that the evidence in the record demonstrates the claimed abuse. However, the petitioner does not sufficiently address the inconsistencies in her affidavits and the psychological evaluation. On appeal, the petitioner submits

additional notarized letters from friends. In her letter, [REDACTED] states that in 1998, the petitioner admitted to regretting becoming involved with J-G-. [REDACTED] states that a couple of months after the wedding reception, he saw the petitioner at the store and that she seemed skinny and pale. He states that the petitioner said that marriage was nothing like she expected and also briefly describes an incident in January of 2005 when J-G- was jealous and possessive of the petitioner at a party. These letters contradict the petitioner's statements that her relationship with J-G- was good until 2000 when he became abusive nor do they provide additional, probative information regarding the claimed abuse. The notarized letters from [REDACTED] likewise do not provide substantive information regarding the claimed abuse. Ms. [REDACTED] briefly describes two incidents where she states that she witnessed J-G- being physically aggressive with the petitioner and one occasion when he slapped Ms. [REDACTED] for intervening in an argument between J-G- and the petitioner. In his letter, Mr. [REDACTED] also recounts witnessing J-G- being aggressive towards the petitioner while she was working at the restaurant. Neither Ms. [REDACTED] nor Mr. [REDACTED] provides additional details about these incidents and the petitioner herself does not discuss them. The preponderance of the relevant evidence does not establish that her husband subjected her to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and 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, that they resided together, and that he battered or subjected her to extreme cruelty. 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 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). Here, that burden has not been met and the petition remains denied.

ORDER: The appeal is dismissed.