

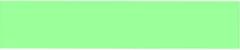


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **SEP 23 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:

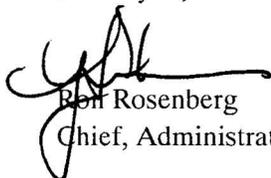


INSTRUCTIONS:

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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a U.S. citizen.

The director denied the petition for failure to establish that the petitioner and her former husband jointly resided together and he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

*Pertinent Facts and Procedural History*

The record reflects that the petitioner is a citizen of Germany who was last admitted to the United States on November 22, 2009 through the via waiver program. The petitioner married R-H-, a U.S. Citizen, on February 5, 2010 in Los Angeles, California.<sup>1</sup> The petitioner obtained a divorce from

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<sup>1</sup> Name withheld to protect the individual's identity.

R-H- on September 8, 2010. The petitioner filed the instant Form I-360 on January 27, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's residence with her husband and the requisite battery or extreme cruelty. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility on all of the statutory grounds. The appeal will be dismissed for the following reasons.

*Joint Residence*

On the Form I-360, the petitioner stated that she resided with R-H- in February 2010 and their last joint address was on [REDACTED] California. In her initial statement, dated January 12, 2012, the petitioner explained that she resided with R-H- in Los Angeles before their marriage from late 2008 until early 2009. She stated that she moved back to Germany in March 2009 and in July 2009, R-H- moved to Atlanta, Georgia. The petitioner recounted that she returned to Los Angeles in November 2009 and R-H- proposed to her over the telephone. She stated that R-H- flew to Los Angeles from Atlanta and they wed on February 5, 2010. The petitioner recounted that the day after their wedding R-H- flew back to Atlanta. She stated that she intended to move to Atlanta with R-H-, as shown on the couple's marriage certificate in which both of them list an address in Atlanta as their residence. She stated that she decided not to move to Atlanta because R-H- became abusive. In response to the RFE, the petitioner recounted that she and R-H- had resided together at an apartment on [REDACTED] in Los Angeles, California. She stated that they planned to reside together at an apartment on [REDACTED] in Atlanta after their marriage. The petitioner's statements show that she and R-H- resided together for several months during their courtship, but they never shared a principal, actual dwelling place after their marriage.

In response to the RFE, the petitioner asserted that the statements from her friends and former spouse, telephone bills, rent receipts and a rental application demonstrate her joint residence with R-H-. The telephone bills are addressed to the petitioner only at the [REDACTED] address in Los Angeles and are dated almost five years prior to the couple's marriage. The rent receipts are also only in the petitioner's name and are dated prior to the couple's marriage. The rental application is for the apartment on [REDACTED] in Atlanta and shows that it was signed by the petitioner on February 29, 2010 and R-H- on February 20, 2010. However, the petitioner explained in both of her statements that while she intended to reside with R-H- at this dwelling, she remained in Los Angeles and never moved to Atlanta.

The statements from the petitioner's friends also do not demonstrate her joint residence with R-H- during the couple's marriage. [REDACTED] stated that he heard that the petitioner and R-H- were planning after their marriage to live at the petitioner's residence in [REDACTED] California. [REDACTED] also stated that the petitioner and R-H- intended to live at her residence on [REDACTED] after their marriage and then move to Atlanta. However, the petitioner explained in her initial statement that R-H- immediately returned to Atlanta after their wedding

ceremony and he continued to reside there alone throughout the duration of their marriage. [REDACTED] recounted in her second statement that she visited the petitioner and R-H- at the couple's apartment on [REDACTED] in Los Angeles. She did not, however, provide the exact date of her visit. [REDACTED] also discussed her visits to the couple's apartment on [REDACTED] but her statement indicates that these visits were prior to the couple's marriage.

R-H- stated in his affidavit that he and the petitioner resided together at an apartment on [REDACTED] in Los Angeles while they were dating. He stated that after their wedding ceremony, they intended to temporarily live together at the petitioner's home located at [REDACTED] in [REDACTED] and then move to his apartment on [REDACTED] in Atlanta. He recounted that he had a diabetic attack after their wedding ceremony and was subsequently unable to be with the petitioner. R-H-'s statement also indicates that he and the petitioner resided together during their courtship, but failed to share a principal dwelling place after their marriage.

On appeal, counsel submits a statement from the petitioner, a supplemental statement from [REDACTED] and previously filed evidence. The petitioner asserted in her affidavit that she resided with R-H- for seven months at an apartment located on [REDACTED] in Los Angeles. She stated that she provided documents to establish that they had a shared residence prior to their marriage and they intended to reside together at a residence on [REDACTED] in Atlanta after their marriage. The petitioner recounted that R-H- departed Los Angeles the day after their wedding ceremony because he had to return to his job in Atlanta. She stated that she did not move to Atlanta with R-H- because she could not travel with an expired immigration status, she did not have the financial means to travel, and because R-H- had threatened her. [REDACTED] clarified in her third statement that she witnessed the petitioner's residence with R-H- at the [REDACTED] location prior to the couple's marriage.

On appeal, counsel asserts that the petitioner's statement explains why the director's decision is erroneous. Counsel, however, fails to articulate how the evidence demonstrates that the petitioner and R-H- shared a joint residence during their marriage, as that term is defined under the Act. Although the petitioner may have intended to reside with R-H- after their marriage, the Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The petitioner in her statements explains that she resided with R-H- while they were dating, but they never shared a "principal, actual dwelling" place after their marriage. Accordingly, the record does not establish that the petitioner resided with R-H- when he was her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Battery or Extreme Cruelty*

In her initial statement, the petitioner recalled that in 2007 R-H- was diagnosed with diabetes and his temperament changed. She stated that on one occasion they had an argument in a coffee shop in which he screamed at her and insulted her. The petitioner recounted that after their wedding ceremony R-H- returned to Atlanta while she stayed in Los Angeles and he started to distance himself emotionally from her and failed to return her telephone calls. The petitioner recounted

instances where R-H- yelled at her and called her names over the telephone. In the statement the petitioner submitted in response to the RFE, she recounted that when they were dating, R-H- was jealous of other men and on one occasion in 2007 he pushed her when she tried to leave their apartment for an event with a male friend. She stated that R-H- did not support her financially during their marriage and he sold her computer without asking for her permission. She recounted that during their marriage, R-H- abused alcohol and drugs, he did not take care of his health and he had an unstable financial situation. The petitioner explained that during their marriage, R-H- called her names, threatened to kill himself if she left him, threatened to harm others, and forced her to engage in sexual relations over the telephone. She stated that in April 2010, R-H- became homeless and refused to tell her his whereabouts. The petitioner recounted that she met R-H- after their divorce in 2012 at a coffee shop and R-H- threatened her with violence and kicked her car. The petitioner probatively described threats from her former husband that were a part of an overall pattern of violence and constitute extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted an affidavit from her former husband, R-H-, in which he stated that during his marriage to the petitioner he “was a raging alcoholic and out of control for the most part.” He stated that he was “struggling with anger [and] major depression” and refused help from the petitioner. The petitioner’s friends, [REDACTED] describe in their letters their observations of how the petitioner was emotionally affected by the breakdown of her marriage to R-H-. The petitioner submitted a letter from [REDACTED] Vocational Guidance Coordinator of the [REDACTED] in which he stated that R-H- was a resident at the treatment center for alcoholism and addiction rehabilitation from June 30, 2010 until January 20, 2011.

The petitioner also submitted evidence to show that she has received mental health treatment from social service agencies that assist survivors of domestic violence. She submitted below letters from: [REDACTED] coordinator of the [REDACTED] [REDACTED] a licensed clinical social worker with [REDACTED] Ms. [REDACTED] stated in her three letters, dated October 7, 2011, January 17, 2012 and June 18, 2013, that the petitioner has been a client of the [REDACTED] since December 2010 and attends individual counseling sessions related to education on the dynamics of domestic violence and enhancing empowerment. She opined that the petitioner is a survivor of domestic violence and suffers from Post-Traumatic Stress Disorder (PTSD). Ms. [REDACTED] stated in her letter, dated October 3, 2011, that since December 2010, the petitioner has attended Sojourn’s peer counselling sessions for victims of domestic violence. Ms. [REDACTED] in her psychological evaluation, dated June 18, 2013, diagnosed the petitioner with PTSD and opined that the petitioner has been seriously impacted by the abuse inflicted by her former husband.

In denying the petition, the director stated that the petitioner’s two statements contained inconsistent reporting of instances of threats by R-H- and lacked independent, probative evidence to corroborate her testimony. In the statement submitted on appeal, the petitioner asserted that she was initially emotionally withdrawn and too afraid to write about R-H-’s abuse. She explained that over the course of her counseling sessions she has recognized the intensity of the domestic violence in her

marriage. She stated that she still fears R-H- and has recently received several violent threats and disturbing phone calls from an unknown number. De novo review of the record shows that the petitioner has provided probative, credible evidence of the extreme cruelty she suffered during her marriage to R-H-. The petitioner in her statements probatively describes threats of violence from R-H- and she provided a letter from R-H- in which he admitted to being a “raging alcoholic and out of control.” She also submitted evidence of her long-term participation in individual and group therapy for domestic violence survivors and psychological evaluation reflecting that she was diagnosed with PTSD because of the abuse inflicted by her former husband. Contrary to the director’s assertions, the second statement from the petitioner is not inconsistent from her first statement; it is only more detailed, as requested by the director in the RFE. Moreover, the petitioner submitted letters from social service agencies and a psychological evaluation as additional evidence to support her claim and all forms of credible relevant evidence will be considered. See 8 C.F.R. § 204.2(c)(2)(iv). The preponderance of the evidenced demonstrates that the petitioner’s former husband subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.<sup>2</sup> Accordingly, we withdraw the director’s contrary determination.

#### *Conclusion*

On appeal, the petitioner has now demonstrated that her former husband subjected her to extreme cruelty during their marriage. However, she has still not established that they jointly resided together during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The petitioner has also demonstrated a qualifying relationship with R-H- and her corresponding eligibility for immediate relative classification. The record shows that the petitioner and R-H- were divorced on September 8, 2010 before this petition was filed on January 27, 2012. The petitioner has now established the requisite battery or extreme cruelty and she has also demonstrated a connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has established a qualifying relationship with a U.S. citizen and her eligibility for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.