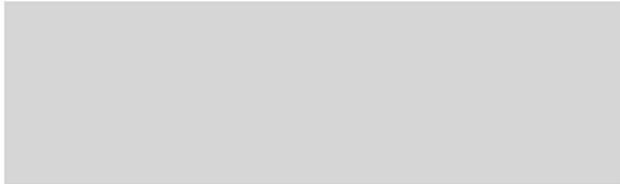




U.S. Citizenship
and Immigration
Services

(b)(6)



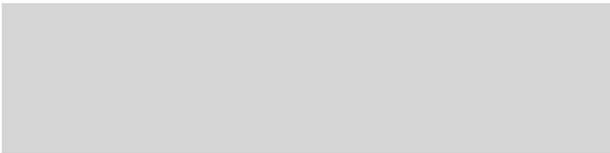
DATE: **APR 30 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: 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)

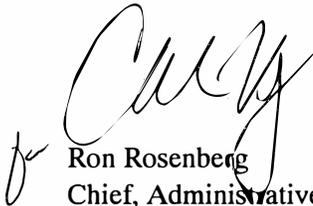
ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the immigrant visa petition. 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 for the petitioner's failure to establish that she resided with her U.S. citizen husband, and that she entered into the marriage with him in good faith.

On appeal, the petitioner submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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

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

* * *

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

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner, a citizen of Kenya, entered the United States on November 26, 2000, as a nonimmigrant student visitor. She married R-J-¹, a U.S. citizen, on [REDACTED] 2008, in [REDACTED] California. The director issued two Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and joint residence with her spouse. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought and denied the petition. The petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Joint Residence

The preponderance of the relevant evidence does not establish that the petitioner resided with R-J-. On the Form I-360 self-petition, the petitioner stated that she resided with R-J- from August 2008 until September 2011 in an apartment on [REDACTED] Texas. In her initial affidavit, the petitioner indicated that she met R-J- in California while she was on a visit, and the couple subsequently married in [REDACTED] where R-J- resided with his family. The petitioner stated that immediately following the wedding, R-J- moved to Texas to reside with her. The petitioner submitted

¹ Name withheld to protect the individual's identity.

three leases covering various time periods between September 2009 and June 2011, which show both the petitioner and R-J- as tenants at the [REDACTED] Texas apartment; however, the leases purportedly signed by R-J- on September 17, 2009, March 12, 2010, and December 16, 2010, bear signatures that differ from R-J-'s signature as it appears on the marriage certificate and his subsequently submitted Texas identification card. Only one of the leases, signed on April 18, 2011, appears to bear R-J-'s authentic signature. In an undated affidavit, the petitioner's friend [REDACTED] recounted having dinner with the couple at their residence. Also in an undated affidavit, acquaintance [REDACTED] discussed having lunch at the couple's home. Neither affidavit contained any substantive information regarding the couple's joint residence sufficient to establish the [REDACTED] apartment as R-J-'s primary residence. The submitted car insurance (dated September 22, 2010), telecommunications correspondence (dated June 3, 2011), and cable television bills (dated April 2011 through August 2011) are jointly addressed to the petitioner and R-J- at the [REDACTED] apartment.

However, the petitioner also submitted evidence with California addresses. The couple's marriage certificate, registered [REDACTED] 2008, lists an address on [REDACTED] California for both the petitioner and R-J-. A jointly filed federal income tax return for 2008 (dated March 2, 2009) was filed using an address on [REDACTED] California, as well as a renter's insurance policy renewal statement dated January 3, 2010, (with a renewal date of March 3, 2010) with the same [REDACTED] address. In response to an initial RFE, the petitioner submitted copies of her Texas driver's license and R-J-'s Texas identification card (issued in April 2010), both bearing the [REDACTED] address. She further submitted a lease renewal reminder notice addressed to both her and R-J-, water bills issued by the apartment complex (dated from August 2010 to September 2011) in both names, and a renewal notice of joint renter's insurance at that address for the period of August 2010 to August 2011. In addition, the petitioner provided joint bank statements (dated January 2010 to March 2010), addressed to her and R-J- at the [REDACTED] residence although these statements indicate that the account was used solely by the petitioner.² The petitioner also submitted a renter's insurance policy renewal declaration for the [REDACTED] California apartment for the period of March 2010 to March 2011, and documentation from an automobile club showing that R-J- received services in California in June, July, and August 2009.

In the second RFE, the director noted that the petitioner had submitted evidence with both California and Texas addresses, and requested clarification. In response, the petitioner provided a personal affidavit, dated July 3, 2013, in which she stated that at the time the couple married, R-J- was living with his family on [REDACTED], so the couple initially used this address for their marriage license and immigration paperwork. She stated that shortly after, he and his family moved to [REDACTED] and so they began to use that address. In contrast to her first

² The bank statements show that the petitioner had \$20 of her biweekly salary direct deposited into this account, and only one debit card was used to make purchases and withdrawals. In response to the director's second RFE, the petitioner acknowledged that the initially provided statements were not from the couple's primary account, and submitted many account statements from the petitioner's primary account with another bank, which show substantially more activity. The petitioner stated that she added R-J- to this account after the couple wed; however, the statements do not indicate that R-J- was on the account or used the account.

affidavit in which she stated that R-J- “immediately” moved to Texas following the wedding, the petitioner reported in second affidavit that the couple started their marriage “in both Texas and California.” The petitioner did not indicate that she ever resided in California, nor did she clarify when R-J- moved to Texas. The petitioner recounted that R-J- often visited his family in California. She indicated that R-J- was looking for a job, but did not state in her affidavit if, and where, he ever obtained employment during the couple’s marriage. The petitioner submitted additional affidavits from family and friends. Her sister, [REDACTED] stated that she visited the couple in their apartment, but did not provide further substantive details of occasions she spent with them or provide a probative account of the joint residence. [REDACTED] and [REDACTED] briefly attested that the petitioner and R-J- resided at the [REDACTED] apartment, but did not provide a factual basis for their assessments. In addition, the petitioner submitted a “Unit/Name History,” which shows that R-J- was listed as a tenant of the [REDACTED] apartment from November 2009 through June 2011.

On appeal, the petitioner asserts that she provided sufficient evidence that she resided with R-J-, and that “commuting between locations is common until a final decision is made on where a couple will ultimately settle.” She further asserts that USCIS is required to consider any credible evidence, and that the record lacks any evidentiary basis to question her credibility. *De novo* review of the entire record reveals that the director did not err in his ultimate determination that the petitioner failed to establish that she and R-J- shared a joint residence.³ Section 204(a)(1)(A)(iii)(II) of the Act requires that the petitioner demonstrate that she resided with her spouse. The Act defines “residence” as a person’s place of general abode, meaning the person’s “principal, actual dwelling place in fact, without regard to intent.” INA § 101(a)(33), 8 U.S.C. § 1101(a)(33). The petitioner has not established by a preponderance of the evidence that she and R-J- ever shared a principal, actual dwelling place. In her initial affidavit, the petitioner claimed that R-J- “immediately” moved to Texas to live with her, but in her second affidavit, she claimed that the couple started their relationship both in Texas and California. She suggests that she considered moving to California, but never stated that she actually resided there. Further, she has represented that she has been continuously employed in Texas. The petitioner’s explanations on appeal are insufficient to overcome the inconsistencies of the record. Accordingly, when considered in the totality, a preponderance of the relevant evidence does not demonstrate that R-J- and the petitioner ever shared a residence as defined by section 101(a)(33) of the Act. Consequently, the petitioner has failed to demonstrate that she resided with her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

Upon *de novo* review of the record, the petitioner has not established by a preponderance of the evidence that she entered into her marriage with R-J- in good faith. In her initial affidavit, the petitioner briefly stated that she met R-J- on a trip to California. She indicated that “as the dating

³ The director did, however, err in considering R-J-’s statements made in support of his Form I-130 petition. On appeal, we do not consider any evidence submitted by R-J- in a prior proceeding, or any statements that he made, unless the same evidence has been resubmitted by the petitioner in support of the instant Form I-360 self-petition.

progressed” they met each other’s family members, and visited each other “often,” but did not provide probative information regarding the couple’s courtship or specific instances that they saw each other besides the occasion in June 2008 when R-J- went to visit the petitioner in Texas and proposed marriage. The petitioner stated that the couple married on [REDACTED] 2008, at a small church in California, but did not further describe the wedding ceremony, or any subsequent experiences that the couple shared beyond the details of the abuse. The petitioner submitted an undated affidavit from friend [REDACTED], who claimed to have met R-J- for the first time in early 2008 when he visited the petitioner. Ms. [REDACTED] further recounted that R-J- moved to Texas after the wedding, but as described above, the record does not indicate that R-J- ever moved to Texas.⁴ [REDACTED] also stated that he met R-J- in early 2008, but did not provide substantive information regarding time they spent together. [REDACTED] stated that she met R-J- in “late 2009,” and like the other affiants, did not provide probative details of the meeting.

In response to the first RFE, dated November 1, 2011, the petitioner submitted an affidavit from her sister, [REDACTED] dated November 22, 2011, in which she attests to having met R-J- when he and the petitioner started dating, and that she spent a lot of time with R-J- and the petitioner before the couple married. However, she did not provide approximate dates for the times that she spent with the couple prior to their marriage, and the petitioner has represented that R-J- visited Texas only twice before the couple married. Ms. [REDACTED] stated that the couple held “family get togethers” at their home. In an undated affidavit, the petitioner’s friend, [REDACTED] indicated that the petitioner and R-J- attended social occasions at her home in Texas. Neither Ms. [REDACTED] nor Ms. [REDACTED] substantively described any specific occasion that they spent with them. The petitioner also provided an affidavit from friend [REDACTED] who attested to meeting R-J- at the petitioner’s apartment on one occasion. Mr. [REDACTED] discussed his perceptions of abuse, but did not provide substantive information relevant to the petitioner’s intent in marriage. The petitioner submitted an additional affidavit from her friend [REDACTED] who again attested to meeting R-J- in early 2008 when he came from California to visit the petitioner. Ms. [REDACTED] again stated that after the wedding, R-J- moved to Texas to be with the petitioner, and she visited them at their home. However, as described above, the petitioner later reported in her July 3, 2013, affidavit that R-J- did not move to Texas right after the wedding. Ms. [REDACTED] stated that R-J- and the petitioner talked about having children, but she did not further discuss any specific visits to the couple, beyond one incident of abuse that she did not describe in probative detail.

In response to the director’s second RFE, the petitioner submitted another personal affidavit. In her affidavit, the petitioner stated that she met R-J- on March 29, 2008, on the beach in [REDACTED] California. She indicated that when she returned to her home in [REDACTED] the couple began a telephone relationship. She stated that R-J- visited her “after a month,” and stayed for a week. The petitioner recounted that during his visit, the couple dined at restaurant, went to a park, and ate dinner at the petitioner’s home where he met her sister. The petitioner did not further describe this visit. The petitioner indicated that a month later, she visited R-J- in California, where the couple dined at a restaurant on one occasion. The petitioner recounted that she met R-J-’s family and friends on that trip,

⁴ Ms. [REDACTED] affidavit and the petitioner’s affidavit contain the same unusual misspelling of “California” (“Carlifornia”), which suggests that both affidavits may have been prepared by the same person.

but did not provide substantive information about these meetings. She indicated that R-J- visited her again in Texas and proposed during that visit on June 20, 2008. She described the proposal, but did not provide probative details about the wedding ceremony. The petitioner stated that they started their married life in both Texas and California, and described their general routine but did not describe specific occasions that the couple shared or otherwise demonstrate her good-faith marital intentions.

With respect to the previously submitted bank statements, the petitioner indicated that the couple actually used a different account, which was her personal account before her and R-J- married. The petitioner stated that she paid all of the household expenses out of this account because she had a steady job. The statements do not reflect usage by more than one individual, nor do they show that R-J- was added to the account.⁵ In response to the director's second RFE, the petitioner provided an additional affidavit from her sister, and affidavits from [REDACTED] and [REDACTED] whose relationship to the petitioner was not described. None of these affidavits contained probative information regarding the petitioner's courtship, wedding ceremony, or shared experiences with R-J-. The petitioner submitted documentation showing that R-J- was covered on her health insurance but also indicated that R-J- did not use the health insurance.

On appeal, the petitioner asserts that she submitted sufficient evidence to establish her good-faith marriage. *De novo* review of the record reveals that the petitioner has not shown by a preponderance of the relevant evidence that she entered into her marriage with R-J- in good faith. Here, the petitioner's affidavits, and those of her friends and family members, lack probative information regarding her courtship, wedding ceremony, shared residence and experiences with R-J-. The submitted leases do not appear to have been signed by R-J- and the remaining evidence are insufficient to overcome the deficiencies of the record. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner entered into her intended marriage with R-J- 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 of the Form I-360 self-petition. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.

⁵ The petitioner provided a printout from the bank with her initial submission that appears to indicate that R-J- was added to the petitioner's savings account at that bank, which as of the date of the printout, had a balance of \$25.00. The printout does not show that R-J- had access to the petitioner's checking account.