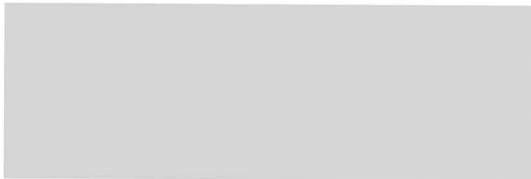




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 03 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](http://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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 finding that the petitioner did not establish that she resided with her former spouse and that she entered into the marriage with her former spouse in good faith. On appeal, the petitioner submits a brief and 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 explained 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 explained 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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Nigeria who claims to have entered the United States without inspection in July 2000. The petitioner married D-J-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2001, and they divorced on [REDACTED] 2012. The petitioner filed the instant Form I-360 petition on May 9, 2014. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residence with D-J- and her entry into the marriage with him in good faith. The petitioner timely responded with additional evidence which the director found insufficient and the director denied the petition on these grounds.

We review these proceedings *de novo*. A full review of the record, as supplemented on appeal, does not establish the petitioner's eligibility. The petitioner has not demonstrated by a preponderance of the evidence that she resided with D-J-, and that she married him in good faith.

*Joint Residence*

The petitioner has not provided sufficient probative evidence to establish that she resided with D-J- during their marriage. On her Form I-360 petition, the petitioner stated that she resided with D-J- from [REDACTED] 2001 to September 2008 and listed "[REDACTED] Michigan, as her last

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

<sup>2</sup> Although the petitioner indicates that she lived on "[REDACTED]" Street, the evidence in the record reflects the the street as "[REDACTED]" Street.

residence with him. In her initial statement, the petitioner indicated that she bought furniture and a few items for the residence she claimed to share with D-J-, but she did not further describe first moving in together, their living arrangements and their marital routines, apart from the abuse. She indicated that she had several separations from D-J-, but did not specify the dates of the separations. In her response to the RFE, the petitioner stated that after she married D-J- he told her that she would not be included on the lease because he did not want the landlord to increase the rent. She further stated that she was not able to make contact with the friends and neighbor that lived near the residence she claimed to share with D-J-. She did not provide any further description of the claimed joint residence during their marriage.

The petitioner also provided notarized letters from her friends, [REDACTED] and [REDACTED] and her cousin, [REDACTED]. Although [REDACTED] generally recounted that she and the petitioner both lived on [REDACTED] and [REDACTED] recalled that he visited the petitioner and D-J- in 2005, their letters primarily discussed the problems in the petitioner's marriage rather than providing probative information about the claimed joint residence. Similarly, [REDACTED] discussed only the petitioner's marital problems. The petitioner also submitted a copy of a letter from D-J-, dated September 29, 2007, stating, in part, that he lived with the petitioner and paid their rent. The letters, however, do not provide sufficient detailed, probative information such as descriptions of the shared residence, possessions, and marital routines, to demonstrate joint marital residence.

The petitioner also submitted evidence to establish that she and D-J received mail at the claimed [REDACTED] address, to include a bank account statement, a voided check, insurance company letters, a vehicle registration printout, and income tax records. The 2002 joint income tax return shows a [REDACTED] Michigan address. The petitioner also submitted a notice of refund, dated April 1, 2009, addressed to the petitioner and D-J- at an address on [REDACTED] Michigan, but the petitioner has not indicated that she shared a marital residence with D-J- at this address.

On appeal, the petitioner submits a notarized statement in which she claims that she lived with D-J- "without interruptions" from 2001 until 2003, and that she lived with him periodically thereafter until 2007. She recounts that after she married D-J- she moved to [REDACTED] Street where D-J- had already been residing because D-J- did not want to live at her home in [REDACTED]. She acknowledges D-J- did not indicate a residence on [REDACTED] Street on their marriage certificate but provides no explanation other than to state she believed that the address listed was his prior address. She indicates that D-J- did not invite his friends to their [REDACTED] home because he believed that they would encourage her to leave him. She generally describes the [REDACTED] residence as a dirty, one-bedroom home and again refers to some purchases she made for the apartment and their marital routines. She also claims that she lived with D-J- "on and off" at "various places while married," but other than the [REDACTED] and [REDACTED] addresses she does not identify specifically any other claimed residences.

The petitioner contends on appeal that the director did not apply the "any credible evidence" standard. She asserts that she provided a detailed affidavit about her joint residence with D-J- and was not able to obtain more than a few documents in her name due to the abuse in her marriage. The

consideration of “any credible evidence” in the adjudication of the petition is an evidentiary standard. *See* Section 204(a)(1)(J) of the Act. *See also* 8 C.F.R. § 204.2(c)(2)(vii) (“All credible relevant evidence will be considered.”) The burden is on the petitioner to prove by a preponderance of evidence that she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376. Traditional forms of joint documentation are not required to demonstrate a petitioner’s joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a petitioner may submit “affidavits or any other type of relevant credible evidence of residency.” *See* 8 C.F.R. § 204.2(c)(2)(iii). Although the petitioner has submitted some documentation indicating that she and D-J- received mail at the [REDACTED] Street address, the petitioner herself has only generally referenced this claimed residence in her statements and has not provided a probative description of this residence or any other claimed marital residences or marital routines in detail. Similarly, the letter from D-J- and the notarized letters from her friends and cousin do not contain detailed, probative information demonstrating that she and D-J- lived together during their marriage. The preponderance of the relevant evidence, therefore, does not demonstrate that the petitioner resided with D-J- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Entry into the Marriage in Good Faith*

In her initial statement, the petitioner recounted that she met D-J- on February 15, 2001, while she was at a shopping mall. She briefly recalled that they both were in line to order food and after she accepted his offer to pay on her behalf, they sat together and talked, and then exchanged phone numbers. She provided no further details regarding their initial meeting. She indicated that the following day D-J- invited her to a restaurant and they began dating thereafter. Other than stating that on one occasion they visited a friend of D-J-’s, she did not further describe their courtship and relationship prior to the marriage. The petitioner recounted that approximately one month after meeting him, D-J- proposed to her in [REDACTED] 2001 and that they married at City Hall in downtown [REDACTED] on [REDACTED] 2001. She did not, however, discuss in probative detail their engagement, civil ceremony, joint residence, or any of their shared experiences apart from the claimed abuse. In her response to the RFE, the petitioner stated that she married D-J- in good faith, but referenced only her joint bank account with D-J- and one day where their former landlord witnessed the petitioner being locked out of the apartment.

In his letter, [REDACTED] generally claimed that the petitioner married D-J- in “good faith” because the petitioner “stick [sic] to the marriage for a long time.” [REDACTED] and [REDACTED] generally asserted in their letters that the petitioner was in love with D-J-. However, none of the letters contain detailed, probative information about the petitioner’s courtship, feelings for D-J-, or decision to marry to support their statements regarding the petitioner’s good-faith intent. D-J- claimed that he was in love with the petitioner and “married her legally,” but he does not provide any detailed, probative information to demonstrate the petitioner’s good-faith marital intent.

The petitioner also submitted a joint bank account statement summary but it lists only two months of account activity in 2002. She also provided an amended joint 2001 federal income tax return, a joint

2002 federal income tax return, a 2005 federal income tax return that shows the petitioner's filing status as "Married filing separately," a joint 2002 Michigan income tax return, and an Internal Revenue Service (IRS) letter. The notice of refund indicates that the refund was based upon D-J-'s 2008 individual income tax and had been applied to his 2005 individual income tax delinquency. The petitioner further submitted a photocopy of a letter from the petitioner's benefit plan, confirming her benefits, as well as benefit forms signed by D-J- to add the petitioner to his life insurance policy and medical plan. However, a copy of the actual life insurance policy and medical plan demonstrating that these elections took effect have not been provided. The record also contains a vehicle registration printout and application that are solely in the petitioner's name, and a [REDACTED] of Michigan letter providing user information to the petitioner. In the RFE, the director indicated that the 2001 income tax return and the benefit plan letter appeared to have been altered. Specifically, in the 2001 income tax return, the petitioner's name had been written over what appeared to be another name, and in the benefit letter, the word "ex" was crossed out in the word "ex-spouse." The petitioner did not address either of these issues in her RFE response.

On appeal, the petitioner contends that the director's denial was based on an erroneous finding that there were problems with the validity of some of her documents. However, although the director indicated that some of the petitioner's joint documents seemed to have been altered, the director did not solely rely upon any single piece of evidence in the determination that the preponderance of the relevant evidence failed to demonstrate that the petitioner entered into marriage with D-J- in good faith. Rather, independent of the altered documents, the director stated that "the affidavits in the record are vague and general in nature" and do not provide "sufficient details" to demonstrate that the petitioner resided with D-J- and entered into the marriage with D-J- in good faith.

The petitioner further asserts that any negative and questionable statements from D-J- should not be given any consideration in the adjudication of the petition. The documentation which the director considered and which we reviewed on appeal was submitted by the petitioner in support of the filing of the instant petition to support her claim that she entered into the marriage with D-J- in good faith and that she and D-J- resided together. Although the petitioner claims on appeal that "[D-J-] made changes to some documents . . . to please his girlfriend," the fact remains that the documents were altered and, therefore, cannot be given any weight in establishing that the petitioner resided with D-J- during their marriage and entered into the marriage with him in good faith.

In addition, the petitioner states that her twelve-page statement provided at filing contained a detailed account of her dates with D-J-, and their wedding ceremony, residence, belongings, and daily routines. She further avers that her statement, coupled with their joint bank account statement, health insurance policy, life insurance policy, joint tax returns, and affidavits are sufficient to demonstrate her good-faith intent in marrying D-J-. As discussed above, the petitioner generally described a single date with D-J- and a visit to D-J-'s friend's house prior to their marriage. Although the petitioner also referenced a 2004 Mother's Day visit to D-J-'s aunt's house and a 2007 Christmas party, these occasions related to the petitioner's claim of abuse rather than providing any probative details to support her good-faith marriage claim.

In her affidavit submitted on appeal, the petitioner claims that she has known D-J- since 2001 and fell in love with him. She generally recounts that they spent time together listening to music, and going to restaurants and movies, and after dating for a month, D-J- proposed to her. She indicates that they did not have any family or friends attend their wedding ceremony, and instead of having a party, she and D-J- went to a restaurant. She recalls that they attended a celebration with D-J-'s friends and co-workers. However, the petitioner again only generally describes her shared experiences with D-J-, and does not further discuss the first time she met him, their courtship, decision to marry, and their marital residence and experiences in detail.

Although the petitioner has provided their joint bank account statement, health and life insurance elections, and joint tax returns, the petitioner has not provided a detailed account of the first time she met D-J-, their courtship, decision to marry, joint residence, and shared experiences. Likewise, the affidavits from her friends, cousin, and D-J- do not probatively discuss her feelings for D-J- or provide any substantive information to establish that she married him in good faith. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with D-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The record does not establish that the petitioner resided with D-J- and entered into the marriage with him in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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*, at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.