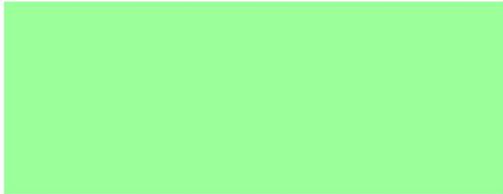


(b)(6)

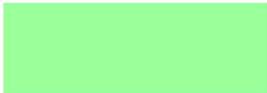


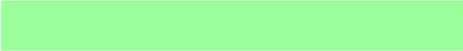
U.S. Citizenship
and Immigration
Services



Date: **JAN 07 2015**

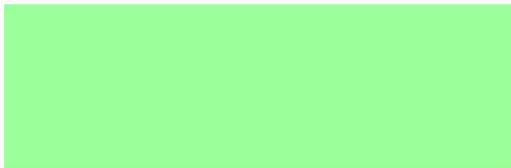
Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

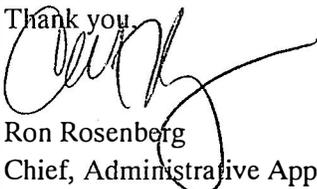


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center 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 former spouse.

The director denied the petition for failure to establish that the petitioner resided with her former spouse, married him in good faith, and is a person of good moral character.

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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into

account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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, a citizen of Jamaica, last entered the United States as a student on April 26, 2011. The petitioner married W-R-¹, a U.S. citizen, on May [REDACTED] and they divorced on April [REDACTED]. The petitioner filed the instant Form I-360 self-petition on December 17, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residence with W-R-, her entry into the marriage with him in good faith, and her good moral character. The petitioner timely responded with additional evidence which the director found insufficient and the director denied the petition on those grounds.

We review these proceedings *de novo*. A full review of the record as supplemented on appeal, fails to establish the petitioner's eligibility. The petitioner has overcome one but not all of the director's grounds for denial and the appeal will be dismissed.

Joint Residence

The director correctly determined that the petitioner failed to establish that she resided with W-R- during their marriage based on the relevant evidence submitted below. On her Form I-360 self-petition, the petitioner stated that she resided with W-R- from September 2010 to August 2012 and listed an apartment on [REDACTED] Missouri as her last residence with him. The petitioner submitted a September 9, 2010, joint lease agreement for the apartment on [REDACTED] and a November 6, 2012, letter from the apartment manager, [REDACTED]. Mr. [REDACTED] stated that the petitioner and W-R- occupied the [REDACTED] apartment but that he only saw W-R- one or two times at the apartment complex after the contract was signed.² During a visit to the [REDACTED] address on April 5, 2012, by U.S. Citizenship and Immigration (USCIS) officers, the petitioner was present and appeared to reside there without W-R-. A review of the record further showed that W-R- had traffic violations in 2011 in which W-R- provided an address that was different from the marital residence and that W-R- signed a lease agreement in 2011 with his father four months after W-R- married the petitioner. The petitioner also submitted joint cable and utility bills, and a joint credit union letter dated October 13, 2011. The credit union letter indicated that as of the date of the letter, the petitioner and W-R- had an open and active account since April of 2008, prior to when the petitioner met, married, or resided with W-R-. The cable and utility bills, without probative testimony, were insufficient to establish that the petitioner resided with W-R- during their marriage.

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 initial letter, the petitioner indicated that upon their marriage, W-R- moved his clothes and some personal items in her small apartment. She did not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with W-R- after they married. The petitioner

¹ Name withheld to protect individual's identity.

² Mr. [REDACTED] also stated that it was common for him not to see tenants because he did not live on the premises.

also provided notarized letters from her brother, [REDACTED] her friends [REDACTED] and [REDACTED] and her niece [REDACTED]. In his letter, [REDACTED] stated that the petitioner lived with him when she began dating W-R- and that he did not see her as much when she moved out and got married. In their letters, [REDACTED] both stated that they were not allowed to visit the petitioner at the petitioner's home. Mr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] did not provide detailed information regarding the petitioner's marital residence nor did they specify an address for the petitioner and W-R-. The petitioner's niece, [REDACTED] stated that she and her brother visited the petitioner at her marital residence and spent the night or the occasional weekend. Ms. [REDACTED] recounted one visit when she went to see the petitioner and witnessed an argument between the petitioner and W-R-. She did not, however, provide any other information about the petitioner's residence with W-R-. In response to the RFE, the petitioner asserted that she resided with W-R- from September 10, 2010, until August 1, 2012, and claimed that she did not know about W-R-'s lease agreement with his father for another apartment. The petitioner also submitted: a second notarized letter from her brother [REDACTED]; a second notarized letter from her niece [REDACTED] a second notarized letter from her friend [REDACTED] and notarized letters from friends [REDACTED]. In their letters, [REDACTED], [REDACTED] mainly focused on W-R-'s abusive treatment of the petitioner and did not provide any probative details about the petitioner's residence with W-R-. [REDACTED] stated that they had been to the couple's marital residence but they did not describe the residence or their visits. The petitioner further provided W-R-'s patient registration form, the petitioner's vehicle insurance policy declaration, and copies of envelopes addressed to W-R- at the [REDACTED] address. The petitioner's vehicle insurance policy declaration was issued after her separation from W-R-. The medical registration form and copies of envelopes addressed to W-R- demonstrate that W-R- may have received mail at the claimed joint address but are insufficient to establish that the petitioner resided with W-R- during their marriage.

On appeal, the petitioner asserts that the director erred in dismissing the submitted evidence as not credible. She submits banks statements in her name which list the [REDACTED] address as evidence of joint residency and additional notarized letters from [REDACTED] Ms. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] provide physical descriptions of the claimed marital residence but admit that that had only visited the petitioner there once or a twice. They do not further describe any specific residential visits, observations, or otherwise provide probative details regarding the couple's living arrangements. The petitioner also submits a letter from W-R- who claims that after he and the petitioner were married, they "lived together at ... [REDACTED] ... and continued to live there until September 2012." Although W-R- claims to have shared a joint residence with the petitioner, he does not describe their home or their shared residential routines in any detail. Accordingly, when the credible and relevant evidence is viewed as a whole, the preponderance of the evidence does not establish that the petitioner resided with W-R-, as required by section 204(a)(1)(A)(iii)(dd) of the Act.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner did not establish that she married W-R- in good faith. The petitioner submitted joint letters from [REDACTED] that stated that the petitioner and W-R- shared an account together but did not contain any information

demonstrating that both accessed the account or otherwise shared any fiscal responsibilities. The [REDACTED] policy is dated after the petitioner's separation to W-R- and shows W-R- as an excluded driver. The marital status section on W-R-'s patient registration form was left blank. Without further, probative testimony, the remaining joint utility and cable invoices and lease carry little evidentiary weight in establishing the petitioner's marital intent.

In her initial letter, the petitioner stated that she met W-R- in 2010 at a party. She recounted that he was charming, made her laugh, and that they exchanged telephone numbers at the end of the party. The petitioner stated that they began communicating by telephone and that after approximately two months, W-R- started to visit her and that she would cook for them and they would watch movies and talk. The petitioner indicated that their relationship progressed and she realized that she loved W-R-. The petitioner stated that she lived with her brother and decided to rent an apartment so that she and W-R- would have privacy. She recounted that W-R- proposed to marry her but that she thought he was not serious. She stated that he renewed his marriage proposal a few days later and that she accepted because she was in love with him. The petitioner did not, however, describe in detail the first time she met W-R-, their courtship and engagement, wedding ceremony, joint residence, or any of their shared experiences, apart from the abuse. In her response to the RFE, the petitioner provided no further probative details to establish that she married W-R- in good faith.

The petitioner also submitted notarized letters from family and friends. In her letter, the petitioner's friend [REDACTED] stated that the petitioner and W-R- were "happy" during their courtship, and that she knew that the petitioner was "in love." Ms. [REDACTED] recounted that the petitioner told her that W-R- proposed to her on two occasions and that W-R- told her that he wanted to get married as soon as possible so that the petitioner would not change her mind. The petitioner's brother, [REDACTED], stated that the petitioner and W-R- were "happy" while they dated. The petitioner's friends, [REDACTED] stated that the petitioner and W-R- seemed in love. [REDACTED] stated that she knew that the petitioner was "happy" to be married and was "looking forward to having her 'twins.'" [REDACTED] stated that he can "attest to the validity" of the petitioner's marriage, and explained that he attended the petitioner's birthday when the couple first started dating and was invited to their wedding party, and he stated that the petitioner and W-R- seemed "happy and in love." The general statements of the petitioner's family and friends do not provide detailed information about the petitioner's good-faith marital intent.

On appeal, the petitioner asserts that the documents that are used to show joint residency also demonstrate good faith marriage such as the September 9, 2010, lease agreement, and the invoices from [REDACTED]. The petitioner further asserts that the affidavits from her friends and family members support her claim of good-faith marital intent. On appeal, the petitioner submits an affidavit in which she asserts that her marriage "was not one of convenience" and that she entered into her marriage in good faith. She states that W-R-'s intentions towards her were genuine and that they lived together, but she does not describe in detail her relationship with him. Likewise, the affidavits from [REDACTED] provide no detailed substantive information to establish the petitioner's good faith at the time of marriage. The petitioner further submits three monthly account statements from [REDACTED] for the shared account dated October 1, 2011, December 1, 2011, and February 12, 2012.

She also submits an e-mail message dated April 30, 2014, from [REDACTED] stating that the company is unable to print any utility bills prior to twelve months. While the petitioner has submitted some joint documents, she has not provided a detailed account of her relationship with W-R- to overcome the deficiencies of the record. Nor have her friends or family members provided detailed substantive information about her intentions at the time of marriage. When the credible and relevant evidence is viewed in the totality, the preponderance of the evidence fails to demonstrate that the petitioner entered into marriage with W-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

The director determined that the petitioner failed to demonstrate her good moral character due to her false claim to U.S. citizenship. Specifically, the director stated that the petitioner marked the 'citizen or national of the United States' box on an Employment Eligibility Verification (Form I-9) for the purpose of securing employment with a private employer. The director concluded that section 101(f)(6) of the Act bars a determination that an alien has good moral character if he or she "has given false testimony for the purpose of obtaining any benefits under this Act."

On appeal, the petitioner states that she did not intentionally claim to be a citizen of the United States on the Form I-9 and that she signed the forms without reading them. Section 101(f) of the Act enumerates nine grounds that preclude a finding of good moral character, including the giving of "false testimony for the purpose of obtaining any benefits." The term "testimony" is limited to "oral statements" made both under oath and "with the subjective intent of obtaining immigration benefits." *Kungys v. United States*, 485 U.S. 759, 780 (1988). In this case, the petitioner allegedly marked the 'citizen or national of the United States' box on the Form I-9. The petitioner's action in checking the box on the Form I-9 does not fall within the "false testimony" bar at section 101(f)(6), or any of the enumerated grounds specifically delineated at section 101(f) of the Act. Accordingly, the petitioner has demonstrated that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has established her good moral character. However, the record fails to establish that she resided with W-R- 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.