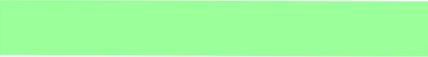


(b)(6)



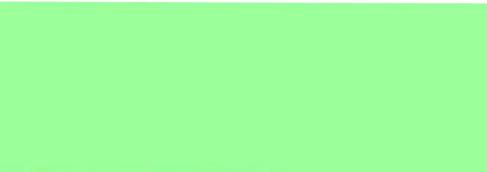
U.S. Citizenship  
and Immigration  
Services

Date: **JAN 15 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 Administrative Appeals Office (AAO) dismissed the petitioner’s appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The petition will remain denied.

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 former spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her former husband in good faith and they jointly resided together.

On motion, 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 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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Peru who last entered the United States on October 26, 2003, as a nonimmigrant visitor. The petitioner married G-S-<sup>1</sup>, a U.S. citizen, on July [REDACTED] Florida. The marriage dissolved in a divorce on February [REDACTED]. The petitioner filed the instant Form I-360 self-petition on August 6, 2012. The director denied the petition for failure to establish the petitioner's good-faith entry into the marriage and her residence with her former husband and we dismissed the appeal on May 5, 2014. The petitioner then submitted this motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner submits a brief and additional evidence and asserts that she resided with G-S- and that she entered into her marriage with him in good faith. Accordingly, the motion to reopen is granted.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and the new evidence submitted on motion fail to overcome the grounds for denial. The petition will remain denied for the following reasons.

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

*Joint Residence*

The petitioner stated on her Form I-360 self-petition that she resided with G-S- from March of [REDACTED] to May of [REDACTED] and that their last address was in [REDACTED] Florida. Consistent with the information listed on the petitioner's marriage license, the petitioner stated in her first affidavit that she rented a room in a house and that G-S- moved in with her after their wedding. In her second affidavit submitted in response to the Request for Evidence (RFE), the petitioner stated that G-S- moved in with her about a month prior to their wedding. She added that on G-S-'s days off, they would rent movies and spend time together in the comfort of their home. The petitioner did not further describe their shared residential routines and marital home in any probative detail. The letters from the petitioner's friends also failed to provide credible, substantive information about the couple's joint residence. In our decision dated May 5, 2014, we determined that the petitioner had not established that she resided with G-S- because the submitted affidavits and the remaining relevant evidence did not provide sufficient information about the petitioner's marital home, residential routines or shared experiences with her former husband, apart from the abuse. Our May 5, 2014 decision is incorporated here.

On motion, the petitioner submits a brief, a third self-affidavit, photographs of the petitioner's [REDACTED] residence, and affidavits from [REDACTED]. In her affidavit, the petitioner repeats her earlier statements, again indicates that G-S- moved in prior to their marriage and does not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with G-S- after their marriage. In her affidavit, the petitioner's mother [REDACTED] states that she visited the petitioner from May 3 to June 2, [REDACTED] when the petitioner and G-S- were dating. She states that she visited the petitioner again in May of [REDACTED] when the petitioner and G-S- had already separated. Apart from restating what the petitioner relayed to her, Ms. [REDACTED] does not describe any personal knowledge of the petitioner and G-S-'s joint residence during their marriage. [REDACTED] stated that she visited the couple many times in [REDACTED] states that she visited the petitioner and G-S- at their home several times and describes one occasion when G-S- would not let her enter the home. Neither Ms. [REDACTED] nor Ms. [REDACTED] further describe any residential visit, observations, or otherwise provide detailed information regarding the petitioner and G-S-'s living arrangements. Without probative, credible testimony, the photographs of the petitioner's mother at the claimed marital residence are insufficient to establish that the petitioner jointly resided with G-S- during their marriage. Accordingly a preponderance of the evidence does not demonstrate that the petitioner and G-S- resided together after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Entry into the Marriage in Good Faith*

In the petitioner's affidavits submitted below, the petitioner recounted that she met G-S- at a party, they started dating, and were wed on July [REDACTED] in a surprise wedding that no one knew about. In our prior decision, we determined that the petitioner had not established that she entered into marriage with G-S- in good faith because she failed to provide probative details regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the

abuse. Likewise, the affidavits from the petitioner's friends submitted below did not contain sufficient information to establish that the petitioner married G-S- in good faith. In addition, the petitioner's friend, [REDACTED] claimed in her affidavits that she knew of and was invited to the petitioner's wedding but could not attend. We determined that the significant inconsistencies between Ms. [REDACTED] and the petitioner's statements undermined the petitioner's claim of good faith marriage to G-S- and that the remaining evidence was insufficient to overcome these deficiencies. Our May 5, 2014 decision is incorporated here.

On motion, the petitioner submits a third self-affidavit where she repeats her earlier statements and adds that G-S- gave her flowers, chocolates, and stuffed animals while they were dating. The petitioner does not add any probative information to the affidavits she submitted previously. The petitioner also submits affidavits from [REDACTED]. In her affidavit, the petitioner's mother [REDACTED] states that she met G-S- in May of 2004 and that G-S- visited the petitioner almost every evening, bringing her flowers, cards, stuffed animals, and chocolates. [REDACTED] states that she knows the petitioner and G-S- had a genuine relationship and a bona fide marriage but provides no specific information. [REDACTED] repeats verbatim her earlier statements and does not add any additional details regarding the petitioner's relationship with G-S-. [REDACTED] asserts that the petitioner was very in love with G-S- and attempts to explain the inconsistencies in her previous affidavits as a grammatical mistake. The affidavits from Ms. [REDACTED] Ms. [REDACTED] Ms. [REDACTED], and Ms. [REDACTED] do not further provide relevant, substantive information to show that the authors had any personal knowledge of the relationship. In addition, Ms. [REDACTED] assertions that she used an incorrect verb tense when describing when she knew about the petitioner's wedding does not sufficiently explain her previous statements. When viewed in the totality, the preponderance of the evidence does not demonstrate that the petitioner entered into marriage with G-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

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). The petitioner has not established that she married G-S- in good faith and that they resided together. Consequently, the appeal will remain dismissed and the petition will remain denied.

**ORDER:** The motion is granted. The May 5, 2014, decision of the Administrative Appeals Office is affirmed and the petition remains denied.