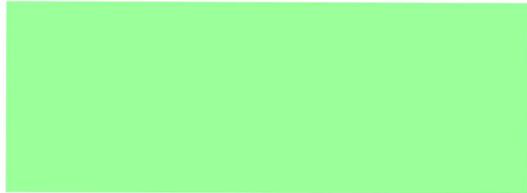
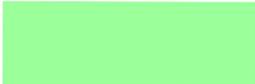


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U.S. Citizenship  
and Immigration  
Services

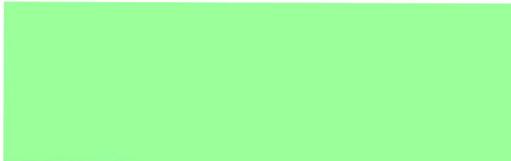


Date: **JAN 15 2015** Office: VERMONT SERVICE CENTER File: 

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:

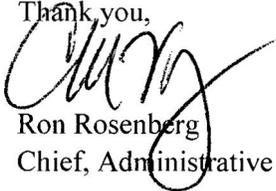


INSTRUCTIONS:

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 Acting Director, Vermont Service Center (“acting 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 spouse. The acting director denied the petition for failure to establish that the petitioner resided with her husband during their marriage, that he subjected her to battery or extreme cruelty during their marriage, and that the petitioner married him in good faith. On appeal, counsel 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 are further explained in 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 or

the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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 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.

(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.

(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 is a citizen of Peru who entered the United States on September 29, 2000, as a nonimmigrant visitor. The petitioner married R-C-<sup>1</sup>, a U.S. citizen, on March [REDACTED] in [REDACTED] Michigan. The petitioner filed the instant Form I-360 self-petition on September 16, 2013. The acting director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's joint residence with R-C-, her good-faith entry into the marriage, R-C-'s battery or extreme cruelty, and the petitioner's good moral character. Through counsel, the petitioner timely responded to the RFE with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the acting director's grounds for denial and the appeal will be dismissed for the following reasons.

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

*Joint Residence*

The director correctly determined that the petitioner failed to establish that she jointly resided with her husband during their marriage. The petitioner stated on her Form I-360 self-petition that she resided with R-C- from March of [REDACTED] until January of [REDACTED] on [REDACTED] Michigan. The petitioner initially submitted no evidence of her joint residence with R-C-. In response to the RFE, the petitioner submitted two partial bank account statements and several affidavits.

The record does not contain any statement from the petitioner. Therefore, she has not provided any probative details of joint residency with R-C-. For example, she did not describe when and where she lived with R-C-, their shared belongings, or any other substantive information regarding her residence with R-C- during their marriage. The affidavits submitted in response to the RFE also did not provide any additional information regarding the petitioner's joint residence with R-C- during their marriage. In their affidavits, [REDACTED] and [REDACTED] stated only that the couple "lived together as a family" or "lived together as a couple." The affidavits from [REDACTED] stated that they "spent time in [the couple's] household." However, none of the affiants described any visit, interaction, or social occasion with the couple at their residence in probative detail or otherwise addressed the couple's joint residence. The affidavit from the petitioner's son, [REDACTED] asserted that the petitioner and R-C- were constantly moving, and that he allegedly lived with them for two weeks. However, Mr. [REDACTED] did not provide a specific address of where he lived with the petitioner and R-C- nor did he provide any probative details of the couple's residences and the time he spent living with them. The two bank account statements in the record are incomplete statements and were addressed to the couple at [REDACTED], a different location from the claimed marital address.

On appeal, counsel for the petitioner, states only that the petitioner was unable to obtain more documents as explained in her affidavit. However, the record does not reflect that the petitioner submitted a personal affidavit either below that addressed the deficiencies as noted by the director or on appeal. Accordingly, the preponderance of the evidence does not demonstrate that the petitioner resided with her husband after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

We further find no error in the director's determination that the petitioner's spouse did not subject her to battery or extreme cruelty during their marriage. The petitioner did not initially submit any evidence to establish the requisite abuse. In response to the RFE, the petitioner submitted affidavits from friends and her son.

The record contains no personal statement from the petitioner describing any of R-C-'s behavior in her own words.<sup>2</sup> The affidavits in the record did not describe in probative detail any particular incident of battery or other behavior by R-C- that would constitute extreme cruelty. The petitioner's son, [REDACTED], stated that he once heard the petitioner and R-C- argue and that R-C- could not support himself. Mr. [REDACTED] also recounted that R-C- threatened to kill himself and call immigration if the petitioner left him. Mr. [REDACTED] did not allege any battery or describe any behavior by R-C- that included actual or threatened violence against the petitioner, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi). In his affidavit, [REDACTED] claimed that R-C- once tried to hit the petitioner but that "everybody intervene[d] and he [R-C-] calmed down." In her affidavit, [REDACTED] stated that on one occasion, she saw R-C- throw an object at the petitioner that luckily missed. Neither Mr. [REDACTED] nor Ms. [REDACTED] provided any details regarding these incidents nor did they describe any other specific incidents of abuse. The remaining affidavits from [REDACTED] failed to describe any mistreatment of the petitioner by R-C-, and instead, described him as being friendly, devoted, and in love with the petitioner. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner's husband ever battered her or subjected her to extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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

The petitioner also failed to establish that she married R-C- in good faith. As evidence of her good-faith marriage, the petitioner initially submitted her marriage certificate. In response to the RFE, the petitioner submitted joint bank account statements and several affidavits.

Because the petitioner has not submitted a personal statement, she has not described in her own words how she met R-C-, the couple's courtship, wedding ceremony, shared residence, and experiences. The affidavits from the petitioner's friends only briefly claimed that the couple entered into a legitimate marriage and lived together as husband and wife. They did not, however, describe any particular visit or social occasion with the petitioner and R-C-, or any other interaction with the couple that would establish their personal knowledge of the relationship. Aside from photographs that are unidentified and undated, the only other relevant evidence consists of two partial joint bank account statements that show no account activity. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that she entered into marriage with R-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Good Moral Character*

Beyond the acting director's decision, the petitioner has not established her good moral character as

<sup>2</sup> Although the petitioner's son indicated in his statement that he "agree[s] with the statement [his] mother has made," as the acting director specifically acknowledged in her decision, the record does not contain a statement from the petitioner. Counsel has not addressed this deficiency on appeal.

required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.<sup>3</sup> The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in September 2010 and ending in September 2013). In the instant case, the petitioner has not provided any statement addressing her good moral character. In addition, although she provided a background check from the State of New Jersey showing that she had no criminal record, according to a copy of the petitioner's Form I-360 self-petition and Biographic Information Form (Form G-325A), dated April 12, 2013, the petitioner also lived in [REDACTED] Michigan, during the requisite time period. However, the record does not contain any police clearance or criminal background check from Michigan. Accordingly, the petitioner has failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

### *Conclusion*

On appeal, the petitioner has failed to establish by a preponderance of the relevant evidence that she resided with R-C- during their marriage, that he subjected her to battery or extreme cruelty during their marriage, and that the petitioner married R-C- in good faith. Beyond the director's decision, the petitioner has also not established her good moral character. 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). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).