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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **JAN 16 2015** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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:

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,

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

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 her U.S. citizen spouse.

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

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

Evidence for a spousal self-petition –

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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 Zimbabwe who entered the United States on January 25, 1998, on a tourist visa. The petitioner married M-C-¹, a U.S. citizen, on October [REDACTED] in Texas. The petitioner filed the instant Form I-360 self-petition on October 12, 2011. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into her marriage. The petitioner responded to each RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Beyond the director's decision, the petitioner has also not established her good moral character.² The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her statement submitted with the petition, the petitioner briefly recounted that she met M-C- in January of 2009 when he was performing services as a carpet cleaner, and that they began dating in July of 2009. She described their good chemistry and romance and how M-C- would bring her small gifts. She described their common love of cooking and her appreciation for M-C-'s

¹ Name withheld to protect the individual's identity.

² 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).

attention to her sons. She recounted that she was very happy after the loneliness she experienced after separating from her first husband two years before she met M-C-. She stated that M-C- proposed to her on September [REDACTED], and they wed on October [REDACTED]. She indicated that the first year with M-C- was wonderful until he lost his job in February of 2011, when the abuse started. The petitioner did not further describe their brief courtship, the wedding ceremony, their joint residence or any of their shared experiences, apart from the abuse.

In response to the second RFE, the petitioner submitted a letter stating that she separated from her first husband and the father of her two children, J-N-³, in January of [REDACTED] and divorced him in June of [REDACTED]. She indicated that J-N- left her the house, and when he visited the children, he also picked up his mail which continued to come to the home she now shared with M-C-. The petitioner recounted that M-C- swept her off her feet and that she trusted him completely until he became abusive. The petitioner also submitted statements in support of the good faith marriage from a friend and former co-worker, [REDACTED] and the petitioner's brother-in-law, [REDACTED]. Both of these individuals indicated that, while they could not attend the wedding of the petitioner and M-C-, they each became close to M-C- and that the couple appeared to be happy until February of 2011. Neither Mr. [REDACTED] nor Mr. [REDACTED] described any particular visit or social occasion with the couple, nor discussed their interactions with the couple in sufficient detail to establish their personal knowledge of the relationship apart from the abuse.

The petitioner submitted the following relevant documents before the director: documents from a joint bank account owned by the petitioner and M-C-; 2009 Internal Revenue Service (IRS) Form 1040 filed by M-C- completed as "Married Filing Separately" that is unsigned and undated; and 2010 IRS Form 1040 filed by the petitioner as "Head of Household". The bank account evidence is of a brief duration, May of 2010 to July of 2010, and showed withdrawals and deposits without naming who made the deposit or indicating what the withdrawals were for.⁴ Neither of the tax returns was filed as "Married Filing Jointly," and while we acknowledge the petitioner's assertion that a couple has the legal option of filing "Married Filing Separately", as M-C- did in 2009, and "Head of Household", as the petitioner did in 2010, the tax returns failed to provide any probative information regarding the petitioner's intention when she married M-C-. Accordingly, the director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into the marriage.

On appeal, the petitioner asserts that the director failed to consider the totality of the circumstances including the extenuating circumstances of abuse and failed to give sufficient weight to the evidence. She asserts that the evidence establishes that she resided with M-C- and entered into the marriage in good faith. On appeal, the petitioner submits an affidavit in which she again states that she was deeply in love with M-C-, that their friends and families were very happy for them, and that she had been

³ Name withheld to protect the individual's identity.

⁴ The petitioner's 2010 tax return indicates that she earned \$131,597 that year. The 2010 joint bank statements submitted into the record do not contain regular deposits indicating that she deposited any of her salary proceeds into the joint account. On appeal, the petitioner states that after M-C- lost his job she had problems with his spending and the account was always overdrawn, and that she stopped contributing to the account. However, the petitioner indicated in both of her statements before the director that M-C- lost his job in February 2011.

lonely for two years before she met him. She states that they celebrated the ceremony on October [REDACTED] at [REDACTED], and that M-C- promised her a church wedding at a later date. The petitioner repeats her earlier statements that the marriage was wonderful until M-C- lost his job in February of 2011. The remainder of her statement on appeal focuses on the abuse in the marriage. The petitioner's statement again fails to provide probative information of their courtship, the wedding ceremony, joint residence and shared experiences. A full review of the evidence submitted below and on appeal fails to establish the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

On the Form I-360 self-petition, the petitioner stated that she lived with her husband from September of [REDACTED] until July of [REDACTED] and that their last joint address was the petitioner's house on [REDACTED] Texas. She submitted several documents in the name of both the petitioner and M-C-, or M-C- alone, which contain this address, including the bank statements, correspondence from the Department of Motor Vehicles (DMV), a copy of the 2009 tax return filed by M-C- that lists the [REDACTED] address, and cable bills addressed to the couple.⁵ The petitioner asserts that this evidence establishes the petitioner's shared residence with M-C-. On the contrary, as noted by the director, the bank statement dated May 14, 2010, is addressed solely to M-C- at a [REDACTED] address six months after they were married, and belies the petitioner's statement that they had been residing together since September [REDACTED]. The correspondence from the DMV indicates that M-C- listed [REDACTED] as his address as of December 2010, but the petitioner's 2010 tax return does not list M-C- as her spouse. M-C-'s 2009 IRS tax return listed [REDACTED] as his address but it is unsigned and undated and there is no indication that it was filed with the IRS. The cable bills indicate a joint address at [REDACTED] from July of [REDACTED] to July of [REDACTED] but as noted by the petitioner, the cable company required no security, and this evidence has little probative value in establishing the petitioner's residence with M-C- at [REDACTED].

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." 8 C.F.R. § 204.2(c)(2)(iii). In her statements, the petitioner did not describe her home life with M-C-, their shared experiences, or their residential routines. [REDACTED] claimed to have visited the couple's home in [REDACTED] Texas but neither identified the marital address or described any visit to the couple's home. On appeal, the petitioner provides explanations for the discrepancies in the submitted documents but does not further describe her shared marital residence with M-C- in any probative detail. Accordingly, the record does not establish that the petitioner resided with M-C-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

⁵ The record also contains [REDACTED] electric bills in the name of the petitioner and a [REDACTED] invoice reflecting the petitioner as the named insured. These documents are insufficient to demonstrate that the petitioner and M-C- shared living expenses or that they resided together.

Good Moral Character

Beyond the director's decision, the petitioner has failed to establish her good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit 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 October of 2008 and ending in October of 2011). 8 C.F.R. § 204.2(c)(2)(v). The petitioner submitted a personal statement in support of her good moral character and local police clearances. The local police clearances, however, appear to be based on name only searches. The petitioner did not list her previous married name in any of the searches although the record shows that she has used that name on utility statements, her 2010 IRS individual tax return, and other documents. The petitioner's police clearances are therefore insufficient to establish her good moral character. Accordingly, the petitioner has failed to demonstrate 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 not demonstrated that she entered into marriage with her husband in good faith and that they resided together. Beyond the director's decision, she has also failed to establish 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.