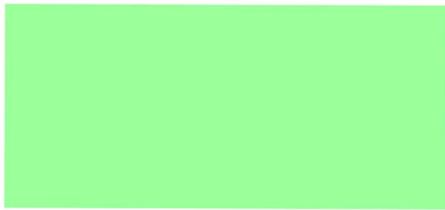


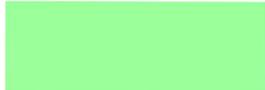
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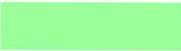


U.S. Citizenship
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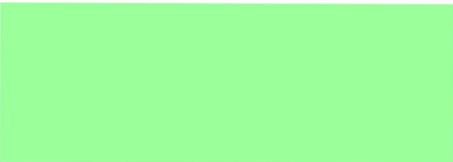
Date: **JAN 30 2015**

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, (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 was the subject of battery or extreme cruelty by her former husband, and that she married him 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). An alien who was previously married to an abusive U.S. citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(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.

* * *

(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.

* * *

(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.

* * *

(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 native of China and citizen of New Zealand, entered the United States on January 17, 2003, as a nonimmigrant visitor. She married K-V-¹, a U.S. citizen, on September [REDACTED] Arkansas. The marriage was terminated in [REDACTED] County, Missouri on March [REDACTED]. The petitioner filed the instant Form I-360 self-petition on July 19, 2011. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty, and the petitioner's good-faith entry into the marriage, among other issues. The petitioner responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. Upon preliminary review of the record, we issued an RFE for evidence of the termination of the petitioner's marriage, which she timely provided. However, upon full review of the record, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will, therefore, be dismissed for the following reasons.

Battery or Extreme Cruelty

The preponderance of the relevant evidence, as supplemented on appeal, establishes that K-V- battered the petitioner or subjected her to extreme cruelty. In her personal affidavit, dated July [REDACTED], the petitioner recounted that after she moved in with K-V-, he repeatedly requested that she perform oral sex on him. The petitioner described K-V- becoming angry when she declined, yelled at her, and made her sleep in the living room. The petitioner stated that on one occasion, K-V- pushed her against a wall and repeatedly slapped her when she declined to engage in sexual acts. The petitioner indicated that she moved out of the home after almost three months because she could not tolerate K-V-'s behavior. She stated that she briefly returned to the home after K-V- assured her that he would not ask her to engage in sexual acts; however, K-V- again requested that the petitioner perform oral sex, and she left the home for good. The petitioner submitted letters from her two sisters in China, in which they attested that the petitioner informed them that that K-V- requested that she perform "abnormal" sexual acts beat her when she declined. She also submitted an affidavit from a co-worker attesting to seeing the petitioner crying on one occasion at work, and although the petitioner declined to discuss the problem specifically with the co-worker, she alluded to K-V-'s mistreatment.

The petitioner also submitted a psychological evaluation prepared by psychologist [REDACTED] dated March 5, 2011. Dr. [REDACTED] provided a detailed description of K-V-'s behavior as reported by the petitioner, indicating that K-V- attempted to force the petitioner to perform unwanted sexual acts by pulling her head to his genital area. Dr. [REDACTED] recounted in detail several violent incidents reported by the petitioner during which K-V- slapped the petitioner in the face and pushed her against a wall when she declined to comply with his sexual demands. Dr. [REDACTED] concluded that the petitioner suffered from major depressive disorder as a result of her experiences with K-V-.

In the RFE, the director incorrectly discounted Dr. [REDACTED] description of K-V-'s behavior, as reported to her by the petitioner, because Dr. [REDACTED] did not personally witness the incidents. The director erroneously

¹ Name withheld to protect the individual's identity.

concluded that the behaviors described by Dr. [REDACTED] and the petitioner did not constitute extreme cruelty for immigration purposes, and requested additional evidence of the abuse. In response to the RFE, the petitioner provided an additional personal affidavit, dated November 22, 2011, in which she described in detail K-V- grabbing her hair and pulling her head to his genital area. The petitioner also submitted a letter from [REDACTED] counselor/advocate at [REDACTED] confirming that she received services from the organization to address domestic violence that she suffered, and another letter from Dr. [REDACTED] indicating that the petitioner continued to suffer from depression.

In her decision, the director again incorrectly discounted relevant evidence, including the letters from Ms. [REDACTED] and Dr. [REDACTED] because neither personally witnessed K-V-'s abuse, and denied the petition. On appeal, the petitioner submits a third personal affidavit, dated March 9, 2013, where she again provides credible and probative details regarding K-V-'s repeated attempts to force her to engage in sexual acts against her will. The petitioner also submits notes from an appointment with Dr. [REDACTED] in November of 2012, and a report from a follow-up appointment in December 2014.

The preponderance of the relevant evidence, reviewed above, demonstrates that her former spouse battered her or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The director erred in finding that K-V-'s repeated attempts to force the petitioner to perform sexual acts against her will did not constitute battery and extreme cruelty as anticipated by the statute and relevant regulations. The petitioner provided personal affidavits credibly describing the abuse that were supported by detailed letters from her psychologist and a letter confirming that she sought domestic violence recovery services. Accordingly, the petitioner has established that her former spouse battered her or subjected her to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act, and the portion of the director's decision finding to the contrary is hereby withdrawn. Although the petitioner has overcome the director's finding on abuse, the appeal cannot be sustained because the petitioner did not establish that she entered into the marriage in good faith, as described below.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner did not establish that she married K-V- in good faith, and the petitioner has not overcome the director's findings with respect to this issue on appeal. In her personal affidavit, dated July 11, 2011, the petitioner described meeting K-V- at the restaurant where she worked. She stated that K-V- would patronize the restaurant, and often lingered in order to spend time with her. The petitioner indicated that K-V- gave her gifts, but that she was not initially interested in a relationship with him. She noted that K-V- "made more efforts to chase [her]" and frequently requested her friendship, but she did not provide probative information regarding their courtship. The petitioner recounted that on September [REDACTED] K-V- arrived at the restaurant and told the petitioner that he was free that day and that he would like to marry her. The petitioner stated that she was excited, and suddenly felt like she wanted to have a relationship with K-V-, but did not immediately accept. The petitioner stated that K-V- took her to the "beach" in Arkansas, but did not further discuss the places they visited on their trip. As Arkansas has no oceanic beaches, it is not apparent from the petitioner's statements what place she visited. The petitioner indicated that they decided to get married in [REDACTED] Arkansas, but did not provide any description of the wedding ceremony. She stated that they returned to Missouri the same day. The petitioner did not explain her

seemingly spontaneous decision to marry K-V- despite her prior reservations about entering into a relationship with him, nor did she discuss any of the couple's shared experiences or their residence, beyond the details of the abuse.

The petitioner provided affidavits from her two sisters and a nephew in China, who attested that the petitioner's marriage to K-V- was bona fide, but did not provide probative information regarding the relationship to illustrate the petitioner's intent in marriage. The petitioner also submitted an affidavit from her co-worker, [REDACTED] dated March 6, 2011. In the affidavit, [REDACTED] attested to observing K-V- give gifts to the petitioner and stay late at the restaurant to spend time with the petitioner. [REDACTED] recounted the day that K-V- came to the restaurant to tell the petitioner that he wanted to marry her. The affidavit described K-V-'s attempts to court the petitioner, but does not provide information regarding the petitioner's intent in marriage.

In response to the RFE, the petitioner provided a second personal affidavit, dated November 22, 2011, in which she again described K-V-'s gifts and his tendency to linger at the restaurant in order to spend time with her. The petitioner briefly noted one dinner that the couple shared at a buffet restaurant in February 2009, but provided no further probative information regarding the couple's courtship. The petitioner repeated her earlier statements but provided no description of the wedding ceremony, her decision to marry K-V-, or their shared residence or experiences, beyond the abuse.

In her decision, the director emphasized the petitioner's failure to submit evidence showing commingling of funds and other types of traditional joint documentation, and denied the petition. On appeal, the petitioner submits an affidavit dated March 9, 2013, in which she again repeats previously provided information regarding her relationship. She also submits an additional affidavit dated December 22, 2014, in which she briefly states that she married the petitioner because she fell in love with him. However, neither affidavit contains additional probative testimony regarding K-V-'s and the petitioner's courtship, wedding ceremony, shared residence and experiences, beyond the details of the abuse. In addition, on appeal, the petitioner submits a bank statement in the name of K-V- only, and one energy bill in both names. She also provides a copy of the court document terminating the couple's marriage, which notes that the parties briefly resided together.

De novo review of the entire record, as supplemented on appeal, does not establish by a preponderance of the relevant evidence that the petitioner entered into her marriage with K-V- in good faith. The director erred by indicating that the petitioner submitted insufficient traditional joint documentation of the bona fides of her marriage; under section 204(a)(1)(A)(iii) of the Act, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). However, the petitioner must nonetheless satisfy her burden of proof to prove by a preponderance of the relevant evidence that she entered into marriage with her former spouse in good faith. In lieu of traditional documentation, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). Here, neither the petitioner's affidavit, nor the third-party affidavits, provides probative testimony regarding her courtship, wedding ceremony, shared residence and experiences beyond the abuse to establish the petitioner's good-faith intent in marriage. The court document indicating that the couple briefly resided together and the

energy bill are relevant to the petitioner's claim, but when viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with K-V- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has established that her former husband battered her and subjected her to extreme cruelty. However, as she has not established that she entered into the marriage with her former husband in good faith, she consequently remains ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.