



U.S. Citizenship  
and Immigration  
Services

(b)(6)



**JUN 01 2015**

DATE:

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE:

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, (“the director”) revoked approval of the petition after properly notifying the petitioner. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under 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 his or her United States citizen spouse.

The director revoked approval of the petition for failure to establish that the petitioner entered into marriage with her U.S. citizen husband in good faith, that she resided with him during their marriage, and that he subjected her to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a new declaration and previously proffered evidence.

#### *Relevant Law and Regulations*

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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.

(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 . . . 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.

\* \* \*

(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.

\* \* \*

(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 Kenya who last entered the United States on January 27, 2005, as a F-1 nonimmigrant student. She married J-O<sup>1</sup>, a citizen of the United States, on [REDACTED] 2009, in [REDACTED] New Hampshire, but they were subsequently divorced on [REDACTED] 2011. The petitioner filed the instant Form I-360 self-petition on June 23, 2011, and it was initially approved on January 31, 2013. The director issued a Notice of Intent to Revoke (NOIR) approval of the petition on July 17, 2014, and notified the petitioner that her petition was granted in error, as a full review of the administrative record demonstrated that she had not established her good faith intentions in marrying her husband, her joint residence with him during their marriage, or the requisite abuse. The petitioner timely responded to the NOIR. However, the director found the response insufficient to overcome the proposed grounds for revocation, and thus, revoked approval of the petition on October 20, 2014. The petitioner timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for revocation. The appeal will be dismissed for the following reasons.

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

The director correctly determined that the petitioner failed to demonstrate that she entered into her marriage in good faith. In the petitioner's initial affidavit, she briefly recounted that, in December 2008, she felt ready to settle down with someone and sometime thereafter met J-O-. She stated that she was swept off her feet and that, after numerous dates, she felt that he was the one for her. The petitioner indicated that J-O- proposed soon after, and they were married in a "small but beautiful ceremony" in [REDACTED] New Hampshire. She stated that they moved in together the same night. None of the petitioner's statements in the record describe in any probative detail how she and J-O- met, their courtship, engagement, wedding ceremony, joint residence or any of their shared experiences, aside from the alleged abuse.

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

The petitioner also submitted letters from her father, [REDACTED]; her stepmother, [REDACTED] and her pastor, Dr. [REDACTED], none of whom addressed the petitioner's good faith intentions in marrying J-O- or provided probative details about the petitioner's relationship with her husband to establish her good faith intent. The remaining letters in the record from the petitioner's friends, [REDACTED] all asserted the petitioner's good faith intentions, but similarly provided no substantive information regarding their interactions with the petitioner and her husband, including descriptions of any particular visit or social occasion with the couple, to establish their personal knowledge of the relationship.

The record below also includes the following relevant documentary evidence regarding the petitioner's good faith intentions: the petitioner's marriage certificate; wedding photographs; a lease agreement; the petitioner's 2010 tax transcript and 2010 original and amended tax returns; letter from the petitioner's tax preparer; the petitioner's two driver's licenses; and various first aid and other certification cards for the petitioner. While the petitioner's marriage certificate, together with photographs of her wedding outdoors, establishes a legal marriage, they are insufficient by themselves to establish the petitioner's good faith intent. The joint lease agreement, executed by the petitioner and J-O- as the tenants, is for a residence located at [REDACTED] for a period from June 2009 to May 2010. However, the petitioner indicated in a Form G-325A, Biographic Information, submitted in June 2011 with her Form I-360 petition, that she only started residing at that address in July 2010. She reaffirmed this information on a second Form G-325, dated May 25, 2013, and again at her adjustment of status interview. In response to the NOIR, the petitioner stated that she had in fact only moved into the [REDACTED] residence in September 2009, but does not explain her prior inconsistent statements and testimony. On appeal, the petitioner submits an updated declaration and again indicates that she moved into the [REDACTED] in September 2009. Although she explains that another mistake in her residential information on the Form G-325A was a typographical error, she again does not explain her prior inconsistent statements regarding the dates of her residence at [REDACTED].

The 2010 tax documents in the record also fail to establish the petitioner's good faith intentions as they were filed after the petitioner separated from J-O-. Moreover, the original 2010 tax return shows that the petitioner indicated her marital status as single, although she was still married at the time of the filing. The copies of the petitioner's driver's licenses<sup>2</sup> and her various certifications are not relevant to the petitioner's good faith entry into her marriage with J-O-.

On appeal, the petitioner submits a new declaration, essentially restating her assertions from her previous statement in response to the NOIR, and resubmits previously proffered evidence. As discussed, the petitioner's statements have not resolved the discrepancies in the record regarding her residences and alleged share life with J-O-, and the documentary evidence submitted does not establish her good faith intentions in marrying him. The noted inconsistencies and deficiencies in the record

<sup>2</sup> The director mistakenly noted that one of the petitioner's driver's licenses showed her residence as [REDACTED] at the time it was issued on November 13, 2009, which conflicted with other evidence in the record showing that she was residing at [REDACTED] in November 2009. However, a review of the document in question discloses that the November 13, 2009 date is in fact the expiration date on the license, which does not contain an issuance date. However, given our determination in the record, this error is harmless.

provided the director with good and sufficient cause to revoke approval of the instant petition after the petitioner failed to overcome them in her response to the NOIR.

Traditional forms of joint documentation are not required to demonstrate a petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's statements and the evidence of record do not provide sufficient detail to demonstrate her good faith intent upon marrying J-O-. The statements of her family and friends also failed to provide relevant, substantive information of the couple's relationship to evidence the petitioner's good faith intentions. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

The petitioner also did not establish that she resided with J-O- during their marriage as required. The petitioner stated on the Form I-360 that she resided with her husband from June 2, 2009 to July 31, 2010, and last resided together at [REDACTED]. The relevant evidence in the record includes the petitioner's statements; the letters of family and friends; a joint lease agreement; the petitioner's two driver's licenses; and various certification cards for the petitioner.

The joint lease agreement for the [REDACTED] residence for June 2009 to May 2010, does not, by itself, sufficiently demonstrate that the petitioner physically resided with J-O- during their marriage, as it conflicts with her statements at her adjustment of status interview and the Form G-325A she submitted on two occasions, indicating that she started residing at the [REDACTED] address in July 2010. Aside from this single lease agreement, the record does not contain any of the other types of evidence of joint residence identified in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and in the director's RFE, including employment records, utility bills, tax records, and property records.

Despite these deficiencies, however, traditional forms of joint documentation are not required, and a petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). Here, although the petitioner's statements provide her personal residence history, they do not set forth in any probative detail a history of shared residences with J-O-. The petitioner indicated in her statements that she and J-O- resided together in her father's home from June 2009 to September 2009 and then at [REDACTED] from September 2009 until July 31, 2010. However, as noted, she twice provided a Form G-325A indicating that she resided at the [REDACTED] address beginning July 2010 and again confirmed this information at her adjustment of status interview. Moreover, contrary to her assertion on the Form I-360 petition that she last lived with J-O- on July 31, 2010, the petitioner's father and stepmother both indicated that she physically separated from her husband and moved into their home over a month earlier sometime in June 2010. Additionally, although the petitioner's declaration states that she is the one who left J-O- at their [REDACTED] residence, the record inconsistently indicates that she continuously maintained that address as her residence since before the couple's separation through to the filing of

the instant petition. As discussed previously, on appeal, the petitioner has not explained the noted inconsistencies in the record.

The letters of the petitioner's parents, pastor, and friends also do not establish the petitioner's shared residence with her spouse. Apart from [REDACTED] letter, none of the other letters indicated that their respective authors ever visited the petitioner in her marital home or had any firsthand knowledge that the petitioner and her husband resided together. Although Ms. [REDACTED] briefly stated that she visited the petitioner at the couple's house for approximately an hour, she did not indicate the address of the residence or provide substantive, probative information of the petitioner's shared residence with J-O-.

On appeal, the petitioner provided an updated declaration to clarify the inconsistencies in her residences and other evidence noted by the director. However, as discussed in this decision, the petitioner's statements do not provide probative details about her shared marital residence history with J-O-, and her statements regarding her residences are inconsistent with other documentary evidence in the record, which have not been sufficiently explained. Further, the statements in the record from family and friends do not evidence knowledge of the petitioner's joint marital residence. Upon *de novo* review, the evidence of record fails to establish by a preponderance of the evidence that the petitioner resided with her husband during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Battery or Extreme Cruelty*

We also find no error in the director's determination that the petitioner had failed to demonstrate that J-O- subjected her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record includes the petitioner's statements; statements of family members and friends; and a psychological evaluation by Dr. [REDACTED], Ph.D.

The psychological assessment by Dr. [REDACTED] was prepared after a two hour interview, and concluded that the petitioner is suffering from symptoms of depression and posttraumatic stress disorder (PTSD), as a survivor of trauma who had witnessed domestic violence as a child and as a victim of domestic violence during her marriage to J-O-. The evaluation indicated that the petitioner reported that J-O- threatened, verbally and physically abused, financially controlled, and isolated her. However, although the report indicated that the petitioner generally discussed incidents of abuse, it does not provide any probative details regarding any specific instances of battery or extreme cruelty inflicted on the petitioner by J-O-. While we do not question Dr. [REDACTED]'s professional expertise, her assessment is based on and relays only the petitioner's statements during her interviews with her, and provides no further, substantive information regarding the claimed abuse.

Traditional forms of documentation are not required to demonstrate that a petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In her initial affidavit, the petitioner stated that for the first three weeks of her marriage, everything went smoothly and she was happy. Thereafter, she indicated that J-O- started becoming more financially controlling and they

started having disagreements. She recounted that J-O- started isolating her from family and friends, started drinking heavily, screamed at her over little things, put her down, called her degrading names, and sometimes threw things at her. The petitioner recalled that one night, when J-O- started yelling again, she packed her bags to leave. She stated that J-O- unexpectedly threw her across the bathroom floor and told her she wasn't going anywhere. The petitioner stated he threatened her with deportation. The petitioner's generalized descriptions of J-O-'s actions are insufficient as she provides no context for when these incidents occurred.

The letters of the petitioner's family and friends also do not establish the requisite battery or extreme cruelty. The petitioner's father and stepmother do not detail their personal knowledge of the alleged abuse except to say that the petitioner informed them about the abuse only after she left J-O-. The remaining letters in the record also do not support the petitioner's claim. Aside from Ms. [REDACTED] letter, none of the letters indicate that the authors ever interacted with the petitioner and J-O- as a couple during their marriage or that they had any personal knowledge of the alleged abuse, apart from what the petitioner relayed to them after she and J-O- separated. Ms. [REDACTED] in her letter, stated that she visited the petitioner on one occasion, which ended when the petitioner asked her to leave after J-O- came home. Ms. [REDACTED] indicated that she heard J-O- telling the petitioner that she knew not to entertain guests in their home and that J-O- started screaming humiliating insults at the petitioner. Ms. [REDACTED] provided no substantive information about when this occurred and the petitioner similarly did not detail this incident in her declarations.

On appeal, the petitioner does not specifically address the director's conclusion that the evidence does not establish that J-O- subjected her to battery or extreme cruelty. As discussed, the relevant evidence submitted below is insufficient to demonstrate that J-O- subjected her to actual or threatened violence, psychological abuse or other forms of extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, upon *de novo* review of the record in its entirety, the petitioner has not established that J-O- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Conclusion*

On appeal, the petitioner has failed to overcome the director's grounds for revocation, as she has not established that she entered into marriage with her husband in good faith, that they resided together, and that he subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish 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 is dismissed and approval of the petition remains revoked.

**ORDER:** The appeal is dismissed.