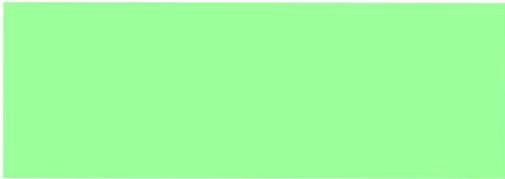
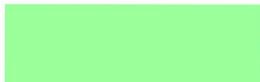


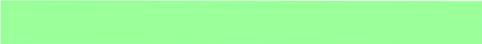


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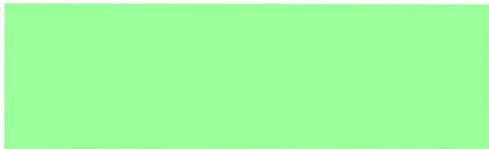


Date: **MAR 24 2015** Office: VERMONT SERVICE CENTER File: 

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)

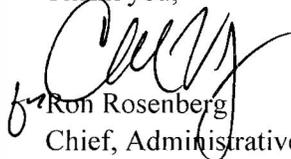
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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,


for 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 a subsequent appeal. The matter is now before us on a motion to reopen and to reconsider. The motion will be granted and our previous decision will be affirmed.

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 a United States citizen.

The director denied the petition because the petitioner failed to demonstrate that she entered into the marriage with her spouse, a United States citizen, in good faith, and that he subjected her to battery or extreme cruelty during their marriage. On appeal, we affirmed the decision of the director.

On motion, the petitioner submits a brief and supplemental 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 under section 204(a)(1)(A)(iii) of the Act 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.

Facts and Procedural History

The petitioner, a citizen of the Philippines, entered the United States on October 2, 2007, as the nonimmigrant fiancée of J-D-¹, a United States citizen. On [REDACTED] 2007, she married J-D- in Nevada. The petitioner filed the instant Form I-360 self-petition on December 2, 2011. The director issued a Request for Evidence (RFE) of, among other things, the requisite abuse and good faith entry into her marriage. The director found the evidence insufficient to establish the petitioner's eligibility, and denied the petition. On appeal, we affirmed the director's decision, and the petitioner filed a motion to reopen and reconsider.

The motion to reopen is granted.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on motion, the petitioner has not overcome the grounds for dismissal in our previous decision. Upon review, the appeal will again be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in our previous determination that the petitioner's spouse did not subject her to battery or extreme cruelty. The petitioner's two statements indicated that her husband ignored her, refused marital relations, requested her financial support, and withdrew his support for the petitioner's immigrant visa. The petitioner did not, however, describe any specific instances of abuse. At the same time, the petitioner was able to develop some independence outside the home. The psychological assessments from [REDACTED] M.A., a licensed marital family therapist, and from [REDACTED] Ph.D., a licensed clinical psychologist, indicated that J-D- neglected the petitioner but did not provide any probative information regarding the claimed abuse. Likewise, the letters from [REDACTED] described various circumstances of the petitioner's married life with J-D-, but failed to indicate that J-D- battered the petitioner, threatened her with violence, or subjected her to psychological or sexual abuse, or engaged in other conduct constituting extreme cruelty as defined in the regulation.

On motion, the petitioner states that the abuse she suffered was mental and emotional, which cannot be demonstrated with police reports or other official reports of abuse and injury. The petitioner refers to the evidence we considered on appeal and states that she was abused emotionally in that she was scared, isolated, and legally and financially dependent on J-D-. The petitioner states that she had a stable life in Hong Kong where she worked for four years for the same family before coming to the United States to marry J-D-. The petitioner describes how J-D- ignored her, called her names, told her to change her clothes, and did not care about her. She indicates that she was in the house most of the time, had no friends, and that J-D- would not take her anywhere. She states that J-D- did not provide

¹ Name withheld to protect the individual's identity.

for her basic needs, made her pay her own telephone bill, and got mad when she asked him where he had been.

She asserts that the actions of J-D- amount to extreme cruelty because he knew that the petitioner gave up her job in Hong Kong to live with him in the United States, which left the petitioner abandoned because of his indifference to her and her lack of friends and family in the United States. The petitioner submitted a contract of employment with a family in Hong Kong evidencing that the petitioner lived and worked in Hong Kong for approximately 18 months until she came to the U.S. to marry J-D-. This documentation does not establish that J-D- abused the petitioner emotionally during their marriage. The petitioner states again that J-D- abused her emotionally by leaving her alone on holidays that are widely celebrated in the Philippines, and to take care of herself without convenient transportation, which was extremely isolating. She states on motion that she lost all self-esteem, and that J-D- treated her without compassion or care for her well-being. The actions described by the petitioner do not demonstrate that J-D-'s behavior involved threatened violence, psychological or sexual abuse or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Viewed in the totality, the preponderance of the evidence does not establish on motion that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

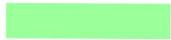
Good Faith Entry into the Marriage

We also affirm our previous determination that the petitioner failed to establish that she entered into her marriage with J-D- in good faith. On appeal the petitioner stated that she and J-D- developed a long-distance relationship over the course of several years, and that J-D- sent her money and visited her in the Philippines. We reviewed the photographs, receipts, correspondence and notes, and the petitioner's explanation that she had no control over any documents and noted that this evidence did not establish the petitioner's good faith in entering into the marriage.² We also reviewed the petitioner's statements affirming her good faith marital intentions, and discussed the lack of probative detail in those statements about the petitioner's courtship with J-D-, their first meeting, engagement, wedding, shared residence, or shared experiences apart from the claimed abuse. We discussed the letters from [REDACTED] who each indicated that the petitioner married J-D- in good faith; the letters were deficient in that they contained insufficient personal knowledge of the petitioner's good faith in entering into the marriage.

On motion, the petitioner states that she was very happy to be marrying J-D-, and looked forward to having her own family again. She states she was happy in J-D-'s presence and it took her a long time to realize that his behavior toward her was harmful. The petitioner does not further provide any substantive information about her courtship with J-D-, their first meeting, their engagement,

² Traditional forms of 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). Rather, 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." See 8 C.F.R. § 204.2(c)(2)(vii). We considered all such evidence on appeal.

(b)(6)



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NON-PRECEDENT DECISION

wedding, shared residence, or shared experiences apart from the claimed abuse. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate on motion that the petitioner entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion, the petitioner has not established that she was subjected to battery or extreme cruelty by her spouse during their marriage or that she entered into the marriage in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

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). Here, that burden has not been met. Accordingly, the appeal will again be dismissed and the petition will remain denied.

ORDER: The motion is granted. The AAO decision dated August 1, 2014 is affirmed. The appeal is dismissed and the petition remains denied.