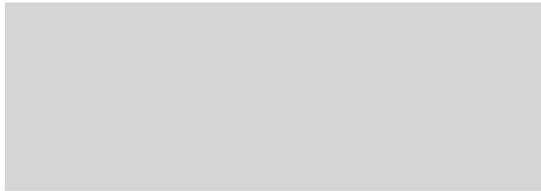




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 1 1 2015**

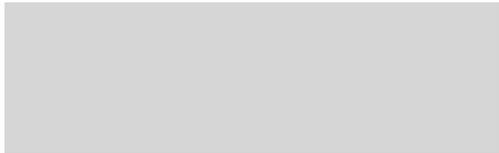
FILE #: [REDACTED]

PETITION RECEIPT #: [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)

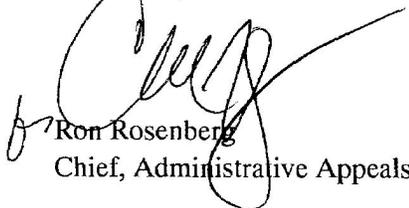
ON BEHALF OF PETITIONER:



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”) denied the petition. 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 the marriage with her husband in good faith and that she jointly resided with him.

On appeal, the petitioner 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 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.

\* \* \*

(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 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.

\* \* \*

(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 Colombia who entered the United States on August 25, 2007, on a tourist visa. The petitioner married A-L<sup>1</sup>, a U.S. citizen, on [REDACTED] 2008, in [REDACTED], and divorced him on [REDACTED], 2010, in [REDACTED] New York. The petitioner filed the instant Form I-360 self-petition on March 27, 2012. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's joint residence with A-L- and 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.<sup>2</sup> 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 brief submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

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

<sup>2</sup> The petitioner was served with a Notice to Appear (NTA) in September 2009, and filed a Form EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. We will consider all relevant evidence in the administrative record.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted below failed to demonstrate the petitioner's entry into her marriage in good faith. The evidence included a copy of a joint income tax return for 2008 and an amended 2009 return filed by the petitioner as "married filing separately;" a letter from [REDACTED] dated March 3, 2009, indicating that the petitioner and A-L- had a share account together with a balance of approximately \$4,500; and a transcript of a civil proceeding initiated by the petitioner against her former husband to vacate the divorce that she alleged was obtained by fraud on his part ("divorce proceedings"). Neither the 2008 income tax return nor the credit union account reflected financial commingling to demonstrate shared fiscal responsibilities.<sup>3</sup> Similarly, the transcript of the divorce proceedings did not establish the petitioner's good faith marital intentions.

Despite these deficiencies, 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). 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). The record includes the petitioner's affidavit,<sup>4</sup> affidavits from [REDACTED]

[REDACTED] and a translated letter from [REDACTED]. In her affidavit submitted with the petition, the petitioner recounted that she met A-L- in December of 2006 when she came to the United States to visit her mother, and that when she returned to Colombia, she and A-L- communicated by electronic media. She reported that on her next visit to the United States in June 2007, she became engaged to A-L-, and shortly after she returned to Colombia, she dropped out of the current semester and returned to the United States in October 2007.<sup>5</sup> After the marriage, the petitioner stated that she moved into the apartment that A-L- shared with his mother and sisters. The petitioner recounted that she found out after a month of marriage that A-L- had fathered a child while they were dating, and that he was responsible for child support and visitation with the child. The petitioner did not further describe their marital life including their joint residence or any of their shared experiences, apart from the abuse.

[REDACTED] stated in her affidavit that she and the petitioner became friends at the university in Colombia, and the petitioner told her that she met A-L- on a trip to the United States in December 2006. [REDACTED] explained that the petitioner returned to the United States in June 2007, and that when the petitioner again returned to Colombia, she could not decide whether to marry A-L- or to continue her university studies. [REDACTED] indicated that she came to the United States at the end

<sup>3</sup> The credit union account was opened by A-L- at his place of employment prior to the marriage and no activity was reflected in the account during the marriage. The 2008 tax return did not reflect that the petitioner worked and contributed financially to the marriage in that year.

<sup>4</sup> The petitioner also submitted an affidavit in support of the divorce proceedings, which we have considered.

<sup>5</sup> The petitioner's statement that she returned to the United States in October 2007 in the middle of the semester, presumably out of love for A-L-, is belied by the fact that the petitioner last entered the United States in August 2007.

of 2008, and stayed with the petitioner's mother, but she did not see the petitioner or meet A-L-<sup>6</sup> who identified herself as sister, stated that she met A-L- in New York in 2010, when she went with the petitioner to pick up a suitcase from A-L-. Neither of the sisters attended the wedding ceremony nor personally observed the petitioner's interactions with A-L- prior to or during the marriage. who stated that he became friends with the petitioner in 2007, also did not attend the wedding. He indicated that he first met A-L- at the petitioner's mother's house at a barbeque, and saw A-L- another time when Mr. went to the petitioner's mother's house for lunch. Mr. briefly described a dinner and dancing date on Valentine's Day in 2009, where A-L- showed up an hour late and did not stay for the evening. Mr. stated that the petitioner planned to have a family with A-L-, and observed that the petitioner seemed very much in love at the beginning of the relationship. His testimony generally described the beneficiary's relationship with A-L-, but did not give probative details about the courtship, the wedding ceremony, or the couple's shared residence or experiences.

The petitioner also submitted evidence from health care workers. In an undated letter,<sup>7</sup> LMSW, stated that the petitioner "had a miscarriage in January, reportedly due to the trauma she was experiencing." In a letter dated August 16, 2010, however, Ms. wrote that the petitioner had been a patient of the since May 17, 2010, and that the petitioner "reported that she was manipulated by her husband to have an abortion to terminate her pregnancy in February 2010." The petitioner also submitted an initial psychiatric evaluation, dated July 2010, from LMSW and MD, Department of Psychiatry, Ambulatory Behavioral Health Services, which reported that the petitioner was referred to the clinic by "following a miscarriage related to emotional and physical abuse by her husband." The letters from Ms. were internally inconsistent with respect to how the petitioner came to lose her unborn child. The psychiatric evaluation indicated that the petitioner was referred to the clinic following a miscarriage related to emotional and physical abuse by A-L-, which was inconsistent with evidence that the petitioner obtained an abortion on February 8, 2010. Further, the letters do not contain any probative details about the petitioner's relationship with A-L- such that would demonstrate that the petitioner married A-L- in good faith. The petitioner submitted a psychosocial assessment from LCSW, ACSW, in which Ms. described how the petitioner first met A-L- on a trip to visit her mother in December 2006, followed by a long-distance relationship and the petitioner's eventual return to the United States in October 2007 to be with A-L-. Here, Ms. assessment listed the date of the petitioner's return to the United States in October 2007, which as noted above, was inconsistent with the evidence establishing the petitioner's last entry into the United States on August 25, 2007. Ms. stated that the petitioner told her that she became pregnant with A-L-'s child after they separated, in November, 2009, and that the petitioner informed her that A-L- convinced her to have an abortion.<sup>8</sup> Ms. did

<sup>6</sup> The record included a note to the petitioner from dated in July 2010, and impression that the petitioner appeared sad and depressed in December 2010. While this evidence expressed thoughts about the petitioner after her divorce from A-L-, it did not provide sufficient information about the petitioner's intentions in marrying A-L-.

<sup>7</sup> The letter reflected a handwritten date of July 19, 2010.

<sup>8</sup> The petitioner stated that when she told A-L- that she was pregnant with his child, he became angry and talked her into having an abortion. She indicated that A-L- accompanied her to the abortion clinic on February 8,

not provide further detail about the courtship, the wedding, their shared experiences or residence, other than the abuse.

Considering the deficiencies of the record, and the petitioner's failure to sufficiently address these deficiencies, the record does not establish that she married A-L- in good faith. The petitioner did not submit additional evidence on appeal to overcome the adverse finding that she did not marry the petitioner in good faith. Accordingly, a full review of the evidence submitted below and the brief submitted 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*

The relevant evidence submitted below failed to demonstrate that the petitioner resided with her former husband, and the petitioner does not submit evidence on appeal to overcome this ground for denial. On the Form I-360 self-petition, the petitioner stated that she lived with her husband from April 2008 until October 2009 and that their last joint address was on [REDACTED], New York. The evidence includes the couple's 2008 joint federal income tax return and the letter from the [REDACTED] dated March 3, 2009. The petitioner also submitted correspondence addressed to the petitioner at [REDACTED] including an invoice from [REDACTED] dated in April 2009, a March 2009 commercial invoice, a birthday card from her friend [REDACTED] an undated letter from an unknown institution and undated correspondence from [REDACTED]. No account activity was reflected on the credit union account or any [REDACTED] account. The correspondence from the [REDACTED] dated in June, July and September 2008 indicated that the petitioner resided in [REDACTED] and the petitioner did not change her address to [REDACTED] until a year after her marriage to A-L-. The petitioner did not provide an explanation for this inconsistency. Further, in her affidavit submitted in support of the petition, in oral testimony in the divorce proceedings, and in sessions with [REDACTED] the petitioner stated that she moved out of the joint residence with A-L- in June or July 2009. Because of the inconsistencies in the dates of the petitioner's claimed residence with her former husband, and the lack of probative supporting evidence, the record does not establish that she resided with A-L- at [REDACTED] during their marriage.

On appeal, the petitioner states in her brief that all of her addresses for the past ten years were given to the court on the Form EOIR-42B application, which as noted above, indicates that she resided at the [REDACTED] address from April 2008 through October 2009, an address inconsistent with the petitioner's statement that she moved out of [REDACTED] in July 2009. The petitioner states that the addresses submitted to United States Citizenship and Immigration Services (USCIS) are consistent, and even if the addresses are inconsistent, it is reasonable to presume that she received mail at the marital domicile until the petitioner was legally separated from A-L- in October 2009. Here, the record does not reflect that the petitioner obtained a legal separation prior to the divorce in March 2010 nor

2010, and gave the clinic his correct first name and a different last name. The medical record of the abortion listed the emergency contact as A-A-, with the first name the same as A-L-'s. In October 2010, the petitioner contacted the same physician for an abortion pill, and provided the doctor with the same emergency contact name of A-A-. This discrepancy was not explained in the record and called into question the veracity of the petitioner's claims that A-L- fathered her child.

does it establish when she resided with A-L-.<sup>9</sup> Furthermore, the petitioner does not sufficiently describe her home life with A-L-, their residential routines, or other information to overcome the discrepancies in the submitted documents. The petitioner does not submit any probative evidence on appeal to establish that she resided with the petitioner. Accordingly, the record does not establish that the petitioner resided with A-L-, as required by section 204(a)(1)(A)(iii)(II)(dd) 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. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.<sup>10</sup>

In these proceedings, the petitioner bears the burden of proof 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.

**ORDER:** The appeal is dismissed.

<sup>9</sup> The Judgment of Divorce indicates that the action for divorce was filed on January 5, 2010. The petitioner's affidavit in support of her I-360 self-petition indicates that she was fraudulently led to sign divorce papers in February 2010. In her affidavit in the divorce proceedings, the petitioner stated that her husband fraudulently led her to sign divorce papers in November 2009.

<sup>10</sup> Similarly, in the Form EOIR-42B application for cancellation of removal, the petitioner indicated that she resided at [REDACTED], until October 2009.