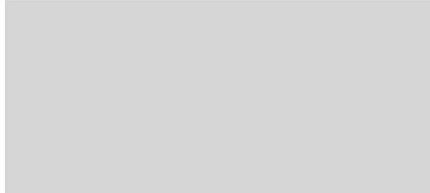




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: MAY 12 2015

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)

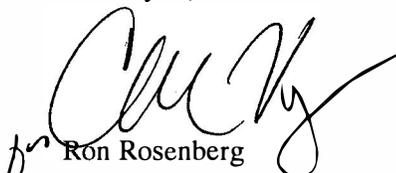
ON BEHALF OF PETITIONER:



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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 petitioner appealed to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is again before the AAO on motion. The motion will be denied, the appeal will remain dismissed and the petition will remain denied.

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 for failure to establish that the petitioner entered into the marriage with her husband in good faith, resided with him, and that he subjected her to battery or extreme cruelty during their marriage. The director subsequently reopened the petition at the petitioner's request, and again denied the petition on the earlier stated grounds. We dismissed the petitioner's subsequent appeal on September 22, 2014 and the petitioner filed the instant motion.

On motion, 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 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.

(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 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.

(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 citizen of the Dominican Republic, entered the United States on [REDACTED], as a B-2 nonimmigrant visitor. She married J-G-¹, a U.S. citizen, on [REDACTED], in New York. The petitioner filed the instant Form I-360 self-petition on May 3, 2007. Upon initial review and again on motion, the director denied the petition. On appeal, we determined that the petitioner failed to overcome the director's grounds for denial. The petitioner timely filed the current motion.

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on motion, fails to establish the petitioner's eligibility. The motion will be denied and the appeal will remain dismissed for the following reasons.

Joint Residence

On appeal, we discussed specific material inconsistencies in the record relating to whether the petitioner resided jointly with J-G- at [REDACTED]. The permanent restraining order obtained by the petitioner against J-G- enjoining him from coming near to [REDACTED] was issued in [REDACTED], yet the petitioner stated in her second affidavit and on the Form I-360 self-petition that J-G- continued to reside at the marital domicile until April 2006. In her third affidavit she stated that she had not resided with J-G- since May 2005.² The petitioner's statement that J-G- moved out of [REDACTED] in April 2006 was also inconsistent with the joint affidavit of [REDACTED] and [REDACTED], the petitioner's parents, who recalled an incident during Christmas 2005 when J-G- became aggressive with the petitioner.

On motion, the petitioner submits a fourth affidavit, an affidavit from J-G-, and previously submitted evidence including correspondence addressed to J-G- at the claimed joint residence on [REDACTED], New York ([REDACTED]), dated between the date of the marriage and May 2005, from the Internal Revenue Service, the Social Security Administration, the New York State

¹ Name withheld to protect the individual's identity.

² The return of service for the summons issued by the [REDACTED] of the State of New York, [REDACTED] County indicates that J-G- was served with this document at an address on [REDACTED] New York on [REDACTED] reflecting that J-G- maintained a residence outside of the home in August 2005.

Department of Taxation and Finance, the financial institution servicing J-G-'s student loan, and an undated letter from the building superintendent. This evidence does not overcome our previous finding that the petitioner did not reside jointly with J-G- during the marriage. In her affidavit, the petitioner does not explain how J-G- maintained his residence at [REDACTED] during the time her restraining order against him prohibited J-G- from coming near to the [REDACTED] residence. The petitioner also does not address the inconsistencies between the dates she claims to have resided with J-G- at [REDACTED] in her self-petition, second affidavit and third affidavit and other conflicting evidence as noted in our previous decision. On appeal, we indicated that the letters from the building superintendent, [REDACTED], were inconsistent with each other and with the petitioner's discrepant assertions that J-G- resided with her until May of 2005 or April 2006.³ The petitioner does not submit new evidence from [REDACTED] to resolve this inconsistency.⁴

In his letter, J-G- states that he resided with the petitioner at [REDACTED] from May 1997 until May 2005, when she ordered him to leave after an unspecified domestic violence incident.⁵ He states that he lived with the petitioner in her parents' apartment and they tried to save money for their own place, but because of his alcohol and drug use they were unable to save any money. J-G- further states that they had frequent parties but he does not provide probative detail about their shared lives, residential routines, or daily interactions with the petitioner or her family members who lived in the household. While J-G- claims to have resided on [REDACTED] for eight years, no credible evidence in the record supports this claim.

The unresolved inconsistencies in the record cast doubt upon the credibility of the remaining evidence. Upon review, the evidence in the record is insufficient 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.

³ The two letters from [REDACTED] were undated and the name of the company, [REDACTED] [sic], was misspelled on the company's letterhead. In his first letter, Mr. [REDACTED] stated that the petitioner and J-G- resided together at the [REDACTED] residence from May 1997 to April 2006. In his second letter, he claimed they resided jointly at [REDACTED] from January 1997 to January 2006. Public records indicate that [REDACTED] was ordered evicted from [REDACTED] in 2002 ([REDACTED]), undermining the reliability of the information provided by Mr. [REDACTED]. In any further proceeding, the petitioner should address these inconsistencies.

⁴ Public records indicate that the petitioner was ordered to pay back rent in the [REDACTED], in four separate unlawful detainer actions for premises on [REDACTED] other than the claimed marital domicile in 2000 and 2002 (civil filing numbers: [REDACTED] [filed [REDACTED]]; [REDACTED] [filed [REDACTED]]; [REDACTED] [filed [REDACTED]]; and [REDACTED] [filed [REDACTED]]). In any further proceeding, the petitioner should address these inconsistencies.

⁵ These dates are inconsistent with a notarized document in the record signed by J-G- on August 20, 1997 in which J-G- stated that he lived on [REDACTED] on that date, undermining J-G-'s credibility.

Entry into the Marriage in Good Faith

Upon review of the entire record, including the evidence submitted on motion, the petitioner has not overcome our previous determination that she did not enter into the marriage in good faith. On appeal, we noted the absence of evidence of shared financial responsibilities or other indicia that the petitioner and J-G- shared a marital union for almost nine years. We also noted the many inconsistencies in the petitioner's testimony regarding the actual wedding ceremony. Photographs from the wedding day showed the petitioner and J-G in front of a wedding cake at City Hall. However, the petitioner stated that only the wedding ceremony was held there after which they celebrated the marriage that evening at her mother's home. On motion, the petitioner does not address why the photograph showed their wedding cake at City Hall when the post-wedding social gathering was in a home. We noted additional inconsistencies on appeal such as the statements of [REDACTED] and [REDACTED], friends who testified that they witnessed the beginning of the couple's relationship in 2003, which were inconsistent with other facts of record reflecting that the petitioner and J-G- met in January 1997 and married in May 1997. On motion, the petitioner fails to address these inconsistencies, which remain unresolved and cast doubt on the bona fides of the marriage.

On motion, the petitioner submits a statement from her estranged husband who contends that they married each other with the intention to reside together as husband and wife. He states that they first met through mutual friends in January 1997 and following a brief courtship, they married but did not go to Atlantic City for their honeymoon as planned, as he had spent the money on drugs and alcohol. J-G- indicates that he spent food and rent money on entertainment, and that there is no discrepancy about whether the marriage was consummated. He claims that he is rehabilitated from alcohol and drug addiction, and is willing to provide testimony about the bona fides of the marriage. J-G- does not describe his courtship with the petitioner, their wedding ceremony, joint residence or shared experiences, nor does he provide probative insight into the petitioner's marital intent. Accordingly, the petitioner has not established by a preponderance of the evidence her good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

On appeal we discussed inconsistencies and deficiencies in the record with respect to the claimed abuse in May 2005 and October 2006. In the Domestic Incident Report (DIR), dated May 14, 2005, the petitioner referred to J-G- as her ex-boyfriend and his address as unknown, both reported facts being inconsistent with the petitioner's claims that she was married to J-G and living with him on that date. The petitioner did not report any injuries or give a statement at the time of the incident. The record contains a Family Offense Petition filed by the petitioner against J-G- in the Family Court, County of [REDACTED] from File [REDACTED] Docket [REDACTED], alleging an act of aggression on July 23, 2005 in that when the petitioner came home from work, a drunk J-G- was waiting for her, became angry and grabbed her by the hair following which he repeatedly called and threatened her.⁶ On motion, the petitioner does not address the noted inconsistencies.

⁶ The petitioner did not mention the July incident in any of her affidavits. The July petition also indicated that

The October 2, 2006, DIR reflected that the petitioner filed a report with the police stating that a week earlier, on September 25, 2006, J-G- approached her wanting to talk and he pulled her hair. She stated that she was able to free herself and run upstairs to her home, and that she called the police but J-G- had already left. She further stated that J-G- called her on October 2, 2006, and threatened her. The record does not contain a related arrest report and there were no additional details in the DIR regarding these incidents or other specific incidents of abuse. We noted in our prior decision that the medical evidence from the Crime Victims Board, [REDACTED], Dr. [REDACTED], Dr. [REDACTED] and Ms. [REDACTED] did not provide any additional evidence regarding the claimed abuse.

On motion, the petitioner does not provide further probative details of any specific incidents of claimed abuse. The petitioner submits an affidavit from her estranged husband in which he states that he does not recall being that violent with the petitioner, and in which he does not admit to or describe any particular incident of claimed abuse. Upon a full review of the entire record, as supplemented on motion, the petitioner has failed to establish by a preponderance of the relevant evidence that her husband subjected her to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On motion, the petitioner has not demonstrated that she entered into the marriage with her husband in good faith, that they resided together, and that he battered or subjected her to extreme cruelty. She is consequently 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 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 and the petition remains denied.

ORDER: The motion is denied. The September 22, 2014 decision of the Administrative Appeals Office is affirmed. The petition remains dismissed.

three months earlier, J-G- hit the petitioner and gave her a black eye, causing the petitioner to file for an order of protection on [REDACTED] that was vacated on [REDACTED] (File [REDACTED], Docket [REDACTED], dated [REDACTED]). Neither the May 2005 DIR, the family court petition, nor the petitioner's affidavits indicated that J-G- blackened the petitioner's eye in May 2005.