U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: JUN 0 3 2013 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The 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 entered into marriage with her former husband in good faith and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii) 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 has divorced an abusive United States 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:

Evidence for a spousal self-petition –

(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 is a citizen of Nigeria who entered the United States on January 24, 2007, as a nonimmigrant visitor. The petitioner married a U.S. citizen on October 27, 2007 in Washington, and they were divorced on December 7, 2010.

On November 1, 2010, the petitioner filed the instant Form I-360. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage and her former husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits additional evidence relating to the petitioner's former husband's mental illness, and asserts on the Form I-290B, Notice of Appeal, that this evidence shows that the petitioner's ex-husband abused her. Counsel further contends that the petitioner has met her burden of proof and that the petition should be approved based on the new evidence submitted.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavit, dated October 26, 2010, the petitioner stated that she met her former husband at his in-law's house, that they started talking, and that the petitioner's former husband later showed an interest in marrying her. She recounted that they "fell in love" and got married. The petitioner stated that her ex-husband was loving and caring and that they moved in together after the wedding, but that he became aggressive and verbally abusive. The petitioner did not further describe how she met her husband, their courtship, engagement, wedding, or any of their shared experiences, apart from the alleged abuse. The petitioner submitted three affidavits from friends who briefly stated that they knew that the petitioner and her ex-husband were married and in love, but did not state the basis for their knowledge, nor did they describe the petitioner's intentions in entering into her marriage.

The petitioner also submitted copies of bank account statements, a void check, a copy of an application for insurance, and copies of cards the petitioner's ex-husband sent her. The director correctly found that these documents were insufficient to show that the petitioner entered into the marriage in good faith. Most of the bank account statements are in either the petitioner's or her husband's name, and are not held jointly. The application for insurance does not show that a policy was actually purchased. The cards from the petitioner's ex-husband do not shed any light on the petitioner's intentions in entering into the marriage.

In response to the RFE, the petitioner submitted another self-affidavit and affidavits from her step-daughter, and . In her affidavit, dated September 13, 2011, the petitioner

declared that she and her ex-husband had a court wedding based on a good faith marriage. She stated that she and her ex-husband exchanged gifts and enjoyed going out for special occasions. The petitioner explained that she was unable to provide additional, joint documentation due to the fact that she was unable to obtain a social security number. Although the petitioner added some information regarding shared experiences, the petitioner again did not provide any probative description of how she met her husband, their courtship, engagement, wedding, or of their shared experiences, apart from the alleged abuse. stated that she was aware that the petitioner and her father courted and that she attended their wedding. She also noted that the marriage was entered into in good faith. reported that the petitioner and her former husband met at her house, and that their feelings progressed to love and she attended their wedding. Neither affiant provided any probative information regarding the petitioner's good faith in entering the relationship or discussed in probative detail any specific observations of the petitioner's interactions with or feelings for her former husband during their courtship or marriage.

The petitioner also submitted photographs or her and her husband, and copies of cards; however, the photographs and cards, without more, are insufficient to meet her burden of proof that she married her husband in good faith. The director correctly concluded that these affidavits, photographs and cards provided no specific information demonstrating that the petitioner married her husband in good faith.

On appeal, counsel asserts that the petitioner met her burden of proof; however, a full review of the relevant evidence submitted fails to reveal any error in the director's determination. Although the petitioner has submitted some documentary evidence and explained why she was unable to obtain more documentation of joint assets, without any description of her intentions in marrying her husband, she has not shown by a preponderance of the evidence that she entered into her marriage in good faith. 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(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 evidence will be considered." 8 C.F.R. § 204(c)(2)(vii). In this case, the testimonial evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith. In her affidavit, the petitioner briefly states that she met her husband and that they married, but she does not probatively describe their courtship, wedding, or any of their other shared experiences, apart from the alleged abuse. In his affidavit submitted on appeal, the petitioner's ex-husband briefly states that he and the petitioner fell in love and married, but he does not offer any insight into the petitioner's intentions in entering into the marriage. None of the affiants discuss in probative detail their observations of the petitioner's interactions with or feelings for her ex-husband during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former husband did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. In her affidavit dated October 26, 2010, the petitioner stated that her ex-husband cursed her and hurt her feelings. She recalled that her former husband threatened not to complete her immigration

paperwork, called her names, and withheld sexual relations. The petitioner noted that her ex-husband had mental problems and attempted suicide. In her affidavit submitted in response to the RFE, the petitioner added that her husband was mentally unstable. The petitioner's statements do not indicate that her former husband ever battered her or that his 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). Similarly, the petitioner submitted three affidavits from friends who stated that the petitioner's husband called her names and threatened her immigration status. However, the affiants do not describe any events or actions that constitute extreme cruelty. The director correctly found the relevant evidence submitted below insufficient to support the petitioner's claims of abuse.

On appeal, counsel submits an affidavit from the petitioner's ex-husband who confirms that there were problems in the marriage and that he had mental health issues. Counsel also submits evidence of the petitioner's husband's mental health issues. Counsel contends that the new evidence of the petitioner's ex-husband's mental issues establishes that the petitioner's ex-husband subjected her to extreme cruelty, and that just because the petitioner does not have a police record of the abuse does not mean that it did not occur. Counsel is correct that a police record of abuse is not required to show that the petitioner was battered or subject to extreme cruelty. However, the fact that the petitioner's ex-husband has mental health issues does not show that he subjected her to extreme cruelty during their marriage, and none of the new evidence submitted describes any behavior or incident that would constitute battery or extreme cruelty. The relevant evidence in this case does not establish that the petitioner's ex-husband's behavior involved battery, threats of 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). Accordingly, the petitioner has not established that her ex-husband 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 determinations that she did not enter into the former marriage in good faith and that her former husband subjected her to battery or extreme cruelty during the marriage. 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.