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UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
ADMINISTRATIVE APPEALS OFFICE
WASHINGTON, D.C.

In the Matter of:

	)	**File No:**
JANE DOE	)	**A # 000-000-000**
	)	
	)	
Self-petitioner under form I-360,	)	
Violence Against Women Act	)	

BRIEF IN SUPPORT OF SELF-PETITIONER'S APPEAL

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Self-petitioner Jane Doe (A # 000-000-000), through undersigned counsel, hereby submits this brief in support of her form I -290B, appeal to the Administrative Appeals Office ("AAO") from the October 10, 2014 decision denying her form I-360 self-petition ("Denial").

I. Procedural History

On November 2, 2011, Ms. Doe filed her form I-360 self-petition with U.S. Citizenship and Immigration Services ("USCIS"), Vermont Service Center ("VSC"). This filing included a detailed declaration from Ms. Doe ("Declaration 1"), as well as supporting witness affidavits and primary evidence of joint residence and good faith marriage, including joint bank account statements, bills, and photographs.[1]

On June 3, 2014, more than two-and-a-half years later, USCIS issued a request for additional evidence ("RFE") on the issues of qualifying marriage, joint residence, and good faith marriage. On the issue of qualifying marriage, the RFE requested additional documentation related to Ms. Doe's valid dissolution of her first marriage in her native country of Country. With respect to the issues of joint residence and good faith marriage, the RFE stated that although Ms. Doe's submission provided some evidence of joint residence with and a good faith marriage to Michael Smith, USCIS had uncovered information from other sources that "casts doubt" on her claims.

On August 27, 2014, Ms. Doe submitted additional evidence as requested, including a second certificate obtained from Country attesting to Ms. Doe's first divorce and, with respect to the issues of joint residence and good faith marriage, Ms. Doe submitted: a second detailed declaration from Ms. Doe ("Declaration 2"); captioned photographs of Ms. Doe and her U.S. citizen husband Michael Smith; copies of tax returns and bank account statements; detailed affidavits and/or letters from seven of Ms. Doe's friends, neighbors, and acquaintances attesting

[1] *See* Section III, *infra*, for a complete list of all evidence submitted in this case.

to her joint residence and good faith marriage to Mr. Smith; and four additional photographs of the apartment and furniture that Ms. Doe shared with Mr. Smith during their marriage.

On October 10, 2014, USCIS denied Ms. Doe's self-petition ("Denial"), stating that she did not establish that she entered into the marriage in good faith, and that she did not establish that she had resided with the her U.S. citizen husband. USCIS erred in denying Ms. Doe's petition by disregarding credible evidence establishing Ms. Doe's joint residence with and good faith marriage to her abuser. USCIS also erred in applying the wrong standard of evidence and burden of proof to Ms. Doe's self-petition.

On November 10, 2014, Ms. Doe filed form I-290B to appeal this erroneous Denial. Accordingly, counsel asks the AAO to reverse the USCIS Denial in this case and grant Ms. Doe's VAWA self-petition. In the alternative, counsel asks the AAO to remand Ms. Doe's self-petition to the VSC for reconsideration of the full record in accordance with the any credible evidence standard as articulated in case law, the special standards established by Congress, and USCIS guidance.

II. Congress Enacted VAWA To Remove Barriers Preventing Immigrant Victims of Domestic Violence from Leaving Abusive Relationships.

Prior to enactment of the Violence Against Women Act of 1994 ("VAWA 1994"),[2] immigrants who suffered abuse had to endure an administrative process that did not recognize or appreciate the manifestations of domestic violence. Through VAWA 1994 and its reauthorizations in 2000, 2005, and 2013,[3] Congress reformed immigration law by creating special routes to status for immigrants who are victims of domestic violence.

[2] Pub. L. No. 103-322, 108 Stat. 1796, 1902-55 (1994).
[3] *See* Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2005); Violence Against Women Act of 2013, Pub. Law 113-4, 127 Stat. 54 (Mar. 7, 2013).

The legislative history of VAWA 1994 reflects Congress's concern for battered immigrants. The House of Representatives Committee on the Judiciary explained the purpose of enacting the new immigration provisions in VAWA 1994:

> Domestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizen's legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or lawful permanent resident spouse.
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> Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.[4]

The Battered Immigrant Women Protection Act of 2000, which was part of the Violence Against Women Act of 2000 ("VAWA 2000"),[5] carried forward Congress's goals underlying VAWA 1994. As explained in the Congressional Record of the Senate, VAWA 2000 was intended to eliminate further barriers facing immigrant victims of domestic violence:

> VAWA 2000 addresses residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of [other bills that amended] immigration law.[6]

The Senate record further states:

> In the vast majority of cases, granting the right to seek the visa to the citizen or lawful permanent resident spouse makes sense, since the purpose of family immigration visas is to allow U.S. citizens or lawful permanent residents to live here with their spouses and children.
>
> But in the unusual case of the abusive relationship, an abusive citizen or lawful permanent resident can use control over his or her spouse's visa as a means to blackmail and control the spouse. The abusive spouse would do this by

[4] H.R. Rep. No. 103-395 (1993).
[5] Pub. L. No. 106-386, 114 Stat. 1464, 1518–37 (2000).
[6] 146 Cong. Rec. S10188, S10195 (Oct. 11, 2000).

> withholding a promised visa petition and then threatening to turn the abused spouse in to the immigration authorities if the abused spouse sought to leave the abuser or report the abuse.[7]

In subsequent reauthorizations of VAWA in 2005 and 2013, Congress reaffirmed its commitment to VAWA's important protections for immigrant victims of domestic violence and other serious crimes, seeking to remove additional barriers to relief, such as allowing post-divorce petitions, bigamy exceptions, and allowing petitions to be filed when the abusive spouse lost status due to domestic violence.[8]

A. USCIS must apply the statutorily mandated "any credible evidence" standard when considering a self-petitioner's claim.

In both VAWA self-petitions and regular family-based petitions, the burden of proof is on the petitioner to establish eligibility for the benefit sought by a preponderance of the evidence.[9] The preponderance of the evidence standard is lower than the "clear and convincing evidence" standard used in other immigration contexts[10] and the "beyond a reasonable doubt" standard found in criminal courts. In simple terms, the preponderance standard is met even if the decision-maker is just slightly above 50% convinced by what is being argued.[11]

Because abusers often control documents central to proving joint residence, good faith marriage and other eligibility requirements, Congress created the special "any credible evidence" standard for all VAWA cases.[12] Under this standard, USCIS *must* "consider any credible

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[7] *Id.*
[8] *See* Pub. L. No. 109-162, 119 Stat. 2960 (2005); Violence Against Women Act of 2013, Pub. Law 113-4, 127 Stat 54 (Mar. 7, 2013).
[9] *See* 61 Fed. Reg. 13,064 (Mar. 26, 1996) (stating that "the 'preponderance of evidence' criteria" is "generally applicable to visa petitions and self-petitions"); *see also In re Petitioner*, 2011 WL 7789867 (Aug. 9, 2011); *see also Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).
[10] As an example, the clear and convincing standard is used in the circumstance where a lawful permanent resident, who obtained that status through a prior marriage, has remarried an alien within five years and filed a visa petition on his/her behalf. If the lawful permanent resident's former spouse is still alive, the lawful permanent resident must show through clear and convincing evidence that the status-conferring marriage was not entered into for the purposes of evading immigration laws. *See* 8 C.F.R. § 204.2(a)(1)(i)(A).
[11] *See I.N.S. v. Cardozo-Fonseca,* 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).
[12] *See* INA §§ 204(a)(l)(J), 240(b)(2)(D), & 216(c)(4); *see also* 8 C.F.R. § 204.2(c)(2)(i).

evidence relevant to a self-petition.... The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable."[13] Moreover, "[a] self-petition may not be denied for failure to submit particular evidence. It may only be denied on evidentiary grounds if the evidence that was submitted is not credible or otherwise fails to establish eligibility."[14]

This standard is in line with Congress's intent to ease the evidentiary challenges that immigrant victims of domestic violence often face. For abused spouses, evidence normally available in family-based marriage petitions may not be accessible because of the dynamics of domestic violence. The former Immigration and Nationality Service repeatedly advised that "adjudicators should give due consideration to the difficulties some self-petitioners may experience in acquiring documentation, particularly documentation that cannot be obtained without the abuser's knowledge or consent."[15] Victims of domestic violence may not be able to obtain the sort of evidence generally available in family-based petitions:

> [B]attered spouse...self-petitioners *are not likely to have access to the range of documents available to the ordinary visa petitioner for a variety of reasons*. Many self-petitioners have been forced to flee from their abusive spouse and do not have access to critical documents for that reason. Some abusive spouses may destroy documents in an attempt to prevent the self-petitioner from successfully filing. Other self-petitioners may be self-petitioning without the abusive spouse's knowledge or consent and are unable to obtain documents for that reason. Adjudicators should be aware of these issues and should evaluate the evidence submitted in that light.[16]

[13] 8 C.F.R. § 103.2(b)(2)(iii); INA § 204.l(f)(l).
[14] Memorandum from Paul W. Virtue, Office of the General Counsel, Immigration and Naturalization Service to Terrance M. O'Reilley, Director, Administrative Appeals Office (Oct. 16, 1998), 2001 WL 1047693 (hereinafter "Virtue Memo").
[15] Memorandum from T. Alexander Aleinikoff, Exec. Assoc. Comm'r, Immigration and Naturalization Service (Apr. 16, 1996) at 5 (emphasis added).
[16] Virtue Memo, *supra* note 14 (emphasis added).

Therefore, a self-petition should not be denied on evidentiary grounds solely because the petitioner has not submitted a specific document requested by the adjudicator. Rather, a self-petition "may only be denied on evidentiary grounds if the evidence that was submitted is not credible or otherwise fails to establish eligibility."[17]

To that end, a self-petitioner is not required to be residing with her abuser at the time of filing a self-petition under VAWA, but must establish that she has previously resided with the abuser in the United States.[18] Neither the statute nor regulations impose a minimum period of joint residency upon the self-petitioner. To meet the burden of establishing joint residency, "*[o]ne* or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States" and "utility receipts […] rental records […] affidavits or any other type of relevant credible evidence of residency may be submitted."[19]

To determine whether an applicant has met her burden for proving good faith marriage, the principal question for USCIS adjudicators is whether the couple intended at the time of the marriage to establish a life together.[20] Generally, the marriage need only be viable at inception to be valid.[21] Furthermore, the Adjudicator's Field Manual instructs adjudicators:

> Remember that the issue to be resolved during the interview is the bona fides of the marriage, not its "viability" (i.e., the probability of the parties remaining married for a long time). USCIS is not in the business of determining (or even speculating about) viability. *Although the petitioner and the beneficiary may not*

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[17] *Id.*
[18] 8 C.F.R. § 204.2(c)(1)(i)(D).
[19] 8 C.F.R. § 204.2(c)(2)(iii) (emphasis added).
[20] *See Agyman v. INS,* 296 F.3d 871, 883 (9th Cir. 2002); *see also Bark v. INS,* 511 F.2d 1200 (9th Cir. 1975); *see also Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983).
[21] *See Matter of Boromand,* 17 I&N Dec. 450 (BIA 1980); s*ee also Matter of McKee,* 17 I&N Dec. 332 (BIA 1980) (differentiating between nonviable and sham marriages). By contrast to a bona fide marriage, a "sham marriage has been defined by the BIA as a marriage which may comply with all the formal requirements of the law but which the parties entered into with no intent, or 'good faith,' to live together and which is designed solely to circumvent the immigrations laws. Sham marriages are not recognized for immigration purposes." USCIS Adjudicator's Field Manual 21.3(H) (hereinafter "AFM"). *See also Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983) (holding a "marriage entered into for the primary purpose of circumventing the immigration laws, commonly referred to as fraudulent or sham marriage, is not recognized for the purpose of obtaining immigration benefits.").

> *appear to have a "viable" marriage, the petition may be approved if the marriage is valid and was not entered into solely for immigration purposes.*[22]

To meet the "bona fide"[23] marriage requirement in regular family-base cases petitioners must submit evidence regarding the "bona fides" of their marriage.[24] The regulations contain a non-exhaustive list of items that qualify as evidence of a bona fide marriage: "primary evidence," such as proof of joint ownership of property, birth certificates of children in common, joint tax returns, a lease showing joint tenancy, and/or affidavits from third parties attesting to the bona fides of the marriage.[25] However, a VAWA self-petitioner is afforded a more lenient evidentiary standard—"any credible evidence"— when reviewing her petition.

To this end, for a VAWA petitioner, evidence of a good-faith marriage:

> *[m]ay 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.*[26]

As acknowledged in the Virtue memorandum, primary documentary evidence will often be difficult to produce because of the domestic violence context. The Virtue memorandum specifically exempts self-petitioners from the requirement to submit affidavits from more than one person, recognizing that abusers often socially isolate their spouses and maintain exclusive control of important documents. Abusers often destroy their spouses' personal documents, and any other documentation that would legitimate them. Insurance policies, property leases, bank accounts, and income tax forms are largely out of reach for victims of domestic violence.

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[22] AFM at 21.3 (emphasis added).
[23] AFM at 21.3(H).
[24] See I-130 Petition for Alien Relative, Instructions, http://www.uscis.gov/files/form/i-130instr.pdf.
[25] *Compare* 8 C.F.R. § 204.2(c)(2)(vii) *with* 8 C.F.R. § 204.2(a)(l)(iii)(B).
[26] 8 C.F.R. § 204.2(c)(2)(vii) (emphasis added).

Finally, abusers often use the legal system against their victims, refusing to provide information necessary for victims seeking status or other help.[27]

III. The evidence that Ms. Doe submitted was credible, detailed, and sufficient to establish that she entered into her marriage in good faith and jointly resided with her abusive husband.

Ms. Doe provided detailed and credible primary and secondary evidence of her good faith marriage and joint residence that is sufficient to meet her burden of a preponderance of the evidence.[28]

A. Ms. Doe submitted six pieces of primary evidence and thirteen pieces of secondary evidence supporting her joint residence with her abuser. The evidence submitted meets her evidentiary burden.

Ms. Doe submitted six categories of primary evidence to support her claims of joint residence. This evidence includes: a marriage certificate showing that the couple resided at the same apartment in 2005; a telephone bill addressed to "Michael and Jane Smith" at the marital residence; and the following evidence that was either given insufficient weight by USCIS or ignored completely in the Denial:

1. Statements from the couple's joint bank account from the years 2006, 2007, 2008, and 2009.[29] These statements were all addressed to both Ms. Doe and Mr. Smith at

[27] *See, e.g.,* Marry Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources & Service Needs of Battered Immigrant Latinas,* 7 Geo. J. on Poverty L. & Pol'y 245, 292 (2000) (discussing threats of deportation, refusal to file immigration papers, and calling the INS); *see also* 146 Cong. Rec. Sl0188, Sl0192 (Oct. 11, 2000) (discussing abusers who blackmail their victims with threats related to immigration status).

[28] As discussed *infra*, the totality of the evidence includes: (1) a marriage certificate; (2) a lease; (3) joint bank account records; (4) a phone bill; (5) tax returns; (6) I-130 Petition for Alien Relative; (7) a psychologist's report; (8) Sam Johnson's 2005 affidavit; (9) Declaration 1; (10) Declaration 2; (11) Sam Johnson's 2011 affidavit; (12) Sam Johnson's 2014 declaration; (13) affidavit of Evan Adams; (14) declaration of Sally North; (15) declaration of Sue South; (16) declaration of Joe Taylor; (17) declaration of Chad Jones; (18) declaration of Hannah Anderson; (19) declaration of June Call; and (20) a collection of 21 photographs of the couple's wedding, marriage, apartment, and marital furniture.

[29] I-360 Petition, Exhibit 15.

the marital address. The Denial gives insufficient consideration of this evidence, which it describes simply as "bank account information."[30]

2. A copy of the third-party residential lease agreement showing that Mr. Smith and Ms. Doe together entered into a lease with Sam Johnson beginning July 5, 2005.[31] As discussed below, the Denial gives insufficient consideration of this evidence.
3. A copy of a notarized affidavit by Sam Johnson dated August 20, 2005 describing "A LEASE OF APPARTMENT [sic] ROOM TO MICHAEL SMITH AND JANE DOE" since July 2005.[32] To Ms. Doe's knowledge, this affidavit was originally submitted to USCIS in 2005 in connection with Mr. Smith's I-130 Petition for Ms. Doe. The Denial ignores this evidence.
4. A USCIS Receipt Notice sent to Mr. Smith at the marital address in 2005 for the I-130 Petition filed by Mr. Smith on behalf of Ms. Doe.[33] The Denial ignores this evidence.

In addition to this primary evidence, Ms. Doe also submitted thirteen pieces of secondary evidence to show joint residence. This evidence includes two sworn affidavits from Ms. Doe, nine supporting declarations from eight other individuals, photographs, and a report from a licensed psychologist. Chief among the secondary evidence are the following exhibits:

1. Two sworn affidavits, totaling 25 pages, detailing Ms. Doe's self-petition eligibility, including her shared residence with her abusive husband.

Ms. Doe's two declarations provide extensive detail of her courtship with Mr. Smith, and of their marriage and joint residence. In these declarations, she explains that Mr. Smith moved

[30] Denial at 2.
[31] I-360 Petition, Exhibit 13. Further, the lease also specifies that that the premises may be occupied by two adults and one child, which further supports Ms. Doe's statements in Declaration 1, discussed *infra*, that she and Mr. Smith were planning to and tried to have a child together.
[32] I-360 Petition, Exhibit 13.
[33] I-360 Petition, Exhibit 14.

into her home shortly after they married, and that the couple purchased new furniture to share.[34] Ms. Doe detailed a typical day in their marriage, including the order in which she and her husband woke up and went to bed, the types of meals they each would cook at the apartment, and her husband's favorite foods.[35]

Ms. Doe provided significant details regarding the joint residence that she and Mr. Smith shared for more than four years during their marriage. She detailed how shortly after the wedding, Mr. Smith moved into the bedroom she leased in Apartment 0 in the Anytown Apartments apartment complex.[36] The couple signed a lease together with the apartment's third roommate and friend, Sam Johnson, who occupied the apartment's second bedroom.[37] The lease, a copy of which was submitted by Ms. Doe, was a document signed by both Ms. Doe, Mr. Smith, and by Sam Johnson.[38] Ms. Doe also described, and provided a photograph of, the bedroom furniture that the couple purchased to commemorate their first home together.[39]

Ms. Doe also described that one of first times her husband physically abused her was in the apartment, recounting that "I came home from work and Michael was drinking in the apartment…He shoved me hard and pushed me out of the apartment…I was able to get back into the apartment and I ran into the bedroom. I locked him out of the room so that he could not hurt me anymore."[40] In another incident in the marital residence, Ms. Doe described how Mr. Smith burned her with a cigarette and she "ran out of the apartment in terror…I sat outside on the front steps of my apartment building by myself for hours until I was sure Michael would be asleep…I snuck back into the apartment and slept on the couch in the living room. Michael was asleep in

[34] Declaration 2 at 4.
[35] *See* Declaration 2 at 4–5.
[36] *See* Declaration 1 at 6.
[37] *See id.*; *see also* Declaration 2 at 3–4.
[38] I-360 Petition, Exhibit 13.
[39] RFE Response, Exhibit 14; Declaration 2 at 4.
[40] Declaration 1 at 11.

the bedroom."[41] In yet another incident, Ms. Doe recounted how, when she "was able to get away, I ran out of the room and Michael chased after me, but our roommate, Sam, intervened….I slept in the bedroom that night and Michael slept in the living room."[42] She added that the "next morning [a friend from church] Evan came over to the house and told Michael he had to stop drinking."[43] Ms. Doe explained how, after the marriage fell apart, Mr. Smith moved out of the apartment and took "our mattress and all his things," as well as several dresses he had given her and a photograph album that contained most of the couple's photographs, including photographs of trips to a local harbor and a trip to Othertown.[44]

In total, Ms. Doe's two declarations provide significant, detailed discussions of her joint residence with Mr. Smith.

2. Two declarations from Sam Johnson attesting to the couple's marriage and joint residence in an apartment he shared with the couple

In addition to Ms. Doe's own detailed declarations, she also submitted two declarations from her roommate, Sam Johnson. Sam Johnson's statements corroborate both the couple's good faith marriage and joint residence in the Anytown Apartments apartment. He stated, "I am the tenant on the lease, and I sublease a room to [Ms. Doe]. I subleased the room to Michael and her while they were married."[45] He also described the couple's relationship: "Initially, Michael and Jane had a peaceful marriage, and they both were very good tenants. However, once Michael lost his job, he started drinking a lot, and he refused to work. All he would do was eat, sleep, and drink."[46] Sam Johnson also described details of the abuse he witnessed Ms. Doe endure in the shared apartment: "Often times, I heard loud yelling and fighting *from their*

[41] *Id.* at 12.
[42] *Id.* at 13.
[43] *Id.*
[44] Declaration 2 at 6.
[45] I-360 Petition, Exhibit 10.
[46] *Id.*

bedroom and when I went to interfere, I saw Jane's face was swollen and I thought Michael had hit her."[47] Sam Johnson's declaration also corroborates that Ms. Doe lived in the Anytown Apartments apartment prior to her marriage to Mr. Smith. Sam Johnson stated that, "For some time [his roommate] Mary told me [she] has a friend who wanted to stay with her, she is Jane. She was sharing the room with her [at] that time…Jane went to town and [met] Michael. They became friends. Mary got married and moved to Kentucky. Jane got married and shared the room with Michael."[48]

3. Credible affidavits from seven additional affiants that provided detail and knowledge of Ms. Doe's joint residence with her abusive spouse constitute additional supporting evidence.

In addition to the declarations of Ms. Doe and Sam Johnson, Ms. Doe submitted signed and/or notarized statements from seven additional witnesses who had firsthand knowledge of her joint residence with Mr. Smith.

Evan Adams recalled that he knew the couple during their marriage, and he detailed multiple instances when he visited their home:

> It was through Jane that I first met Michael. Jane brought Michael to church every now and then. When Jane introduced me to Michael, we stood in front of the church hall after the service to talk for almost 30 minutes. At that time, Jane told me that they were already married, and I could tell that they were really happy together….Oftentimes, when Jane and Michael fought, Michael called me for a ride so that he could go out and get a drink. When I went to *Jane and Michael's house*, I tried my best to placate them. I told Michael not to fight with a woman, and *took him outside of the house* to cool him off.[49]

Sally North stated that she "…met Michael when I went to visit Jane at Anytown Apartment. They were living happily together."[50] Sue South explained that she "used to be a neighbor of Jane Doe and Michael Smith (sic) at the time I was residing in Anytown Apartments,

[47] *Id.* (emphasis added).
[48] RFE Response, Exhibit 9.
[49] I-360 Petition, Exhibit 11 (emphasis added).
[50] RFE Response, Exhibit 6.

Anytown."[51] She recalled that she would "see the couple together during evenings after work. The couple used to shop together on Saturdays and would sometimes visit me on Sundays."[52]

Another witness, Joe Taylor, recounted that he knew the couple since 2006 and visited the marital residence: "…Miss Jane Doe and Brother Michael were happily married and I know them from year 2006 I usually go to their apartment at Anytown Apartments they were so nice to me that sometimes [I would] go to them with my son."[53] Yet another neighbor, Chad Jones, described his knowledge of the couple: "I knew Jane Doe and Mike Smith (sic) were married since 2006 when I was sharing an apartment with a friend in the building block where the couple resided. I also used to meet the couple in the neighborhood convenience store (7-Eleven) as well as in church."[54] Hannah Anderson stated that she has "known this couple Jane Doe and Mike since 2005 when the couple were residing in their residence at Address."[55] Ms. Anderson also recalled that she "even invited this couple to my outdooring [Country wedding] ceremony in June 2008 at my home."[56] Finally, June Call recalled, "I used to visit the couple regularly since Jane Doe is a friend. I also used to out with the couple and enjoyed their company."[57]

4. A credible report from a licensed psychologist corroborates Ms. Doe's accounts of her joint residence.

Finally, Ms. Doe submitted a report from a licensed psychologist who diagnosed Ms. Doe with Post-Traumatic Stress Disorder and Major Depression as a result of the abuse she endured. That report details the effects of the abuse, but it also includes a discussion of Ms. Doe's joint residence with her husband, including, for example: that Mr. Smith "was coming home drunk at night;" that "every time he came back home he was ready to start an argument;" that

[51] RFE Response, Exhibit 7.
[52] *Id.*
[53] RFE Response, Exhibit 8.
[54] RFE Response, Exhibit 10.
[55] RFE Response, Exhibit 11.
[56] *Id.*
[57] RFE Response, Exhibit 12.

"[s]ometimes, he would come home with a friend;" and that "one occasion where [Ms. Doe] wanted to call the police, she ran to their roommate's room to use the phone but the roommate kept her from calling because they did not want to have a chaotic situation in the house."[58]

B. The evidence submitted by Ms. Doe, when assessed in its totality, does not contradict the outside information obtained that USCIS claims "casts doubt" on whether Ms. Doe and her husband resided together from 2005 – 2009.

In denying Ms. Doe's I-360 petition, USCIS relies upon three additional facts it apparently obtained directly from its records and from the apartment complex where the couple lived and where Ms. Doe still resides today. However, none of the external information contradicts the evidence submitted by Ms. Doe and recited above.

1. In the RFE, USCIS relies upon its contact with the Anytown Apartments property manager who conveyed that there was "no record" of Ms. Doe and Mr. Smith living in the apartment leased by Sam Johnson.

USCIS claims in its RFE that the Anytown Apartments property manager conveyed there was "no records" of the couple living in Apartment 0.[59] However, this information does not contradict the evidence submitted by Ms. Doe. Specifically, Sam Johnson's 2011 affidavit plainly states that he is the "tenant on the lease" and that he "subleased" the second room to Ms. Doe and Mr. Smith.[60] Nowhere did Sam Johnson or Ms. Doe claim that the sublease was executed through the apartment management.[61] Further, Sam Johnson's statement that he subleased the bedroom to Ms. Doe is supported by the lease executed between Sam Johnson, Mr. Smith, and Ms. Doe. It is further corroborated and supported by the additional primary evidence listed above, including the telephone bill, the bank statements, and Mr. Smith's I-130 petition—all of which were addressed to one or both Ms. Doe and Mr. Smith over a period of years

[58] I-360 Petition, Exhibit 17 at 4.
[59] RFE at 3.
[60] I-360 Petition, Exhibit 13.
[61] Ms. Doe explained in her response to the RFE that it is in fact common in the complex for many people to share an apartment without formally being on the lease. *See* Declaration 2 at 3.

throughout the marriage—as well as by secondary evidence in the form of Ms. Doe's and multiple other witness affidavits.

USCIS concedes in the RFE that Ms. Doe submitted "some evidence" that she resided with her abuser.[62] As discussed above, the regulations permit as few as one document as evidence of joint residence. Thus, "some" credible evidence is sufficient to meet her burden. Yet, despite Ms. Doe's submission of substantial *additional* credible evidence to corroborate her joint residence in response to the RFE, USCIS inexplicably denied her self-petition on the ground that she did not submit evidence sufficient to establish joint residence.

2. In the Denial, USCIS relies upon a 2002 lease for the apartment that listed Sam Johnson and two other individuals as tenants.

Second, in the Denial, USCIS cites a lease for the apartment that pre-dates Ms. Doe's residency in the apartment, and that pre-dates her joint residence with Mr. Smith by several years.[63] Thus, it is unclear what, if any, probative value this provides. It does not conflict with the ample primary and secondary evidence submitted by Ms. Doe in support of her joint residence with her husband.

Both Ms. Doe and Sam Johnson explained in multiple statements that Ms. Doe moved into the apartment to share one room of the apartment with a woman named Mary in 2003. Even though Mary is not listed on the 2002 lease filed with the property manager, both Ms. Doe's and Sam Johnson's own statements, taken as a whole, plainly, credibly, and reasonably explain that Ms. Doe was never a party to a lease with the property manager, but rather was an unofficial sub-lessee of the bedroom in which she resided, and that Mr. Smith moved into that same room with her after their marriage. Ms. Doe further explained in her sworn affidavit that it was and

[62] RFE at 3.
[63] Denial at 3.

continues to be common practice in her apartment complex for tenants to rent out rooms in their apartments without adding those individuals to the formal lease or executing a formal sublease.[64]

3. In the RFE and Denial, USCIS relies upon Sam Johnson's 2006 immigration filings listing his own wife as a resident of the apartment.

Third, the RFE claims that "USCIS records show that Sam Johnson has claimed in his own immigration filings in 2006 that he was residing with his wife in apartment 0." USCIS interpreted this statement as exclusionary and ignored Sam Johnson's 2005 notarized affidavit that clearly stated that Sam Johnson leased a bedroom from his apartment to Ms. Doe and Mr. Smith. Notably, Sam Johnson's quoted statement does not state that he lived only with his wife in 2006.[65] Further, in response to the RFE, Ms. Doe explained that she does not ask Sam Johnson about the woman who has stayed with Sam Johnson at times, or about Sam Johnson's personal life in general, because "[i]n my culture, it would be inappropriate for me to ask a man questions like that or to pry into his personal life."[66]

C. Ms. Doe submitted five pieces of primary evidence and thirteen pieces of secondary evidence supporting her good faith marriage to her abuser. The evidence submitted meets her evidentiary burden.

Ms. Doe submitted five pieces of primary evidence to support her claim of good faith marriage. This evidence includes: a collection of photographs of the couple's wedding and visits with Mr. Smith's family; telephone records, discussed *supra*; joint bank account statements, discussed *supra*; three years of tax returns filed by Ms. Doe listing Mr. Smith as her

[64] Declaration 2 at 3.
[65] The RFE's statement that "USCIS records show that Sam Johnson has claimed in his own immigration filings in 2006 that he was residing with his wife in apartment 0 and *there is no evidence showing that anyone else was living with him*" (emphasis added) is also clearly in error given the ample evidence provided regarding the joint residence. It is demonstrably false for USCIS to claim that "there is no evidence" showing Ms. Doe's and Mr. Smith's residence in the apartment. While Ms. Doe has no knowledge of what Sam Johnson submitted in his own 2006 filings, she has submitted ample evidence in her self-petition filing to evidence that she and her husband resided in the apartment during their marriage.
[66] Declaration 2 at 7.

spouse; and the 2005 I-130 Petition for Alien Relative Mr. Smith filed on Ms. Doe's behalf. The following evidence was given insufficient weight by USCIS in the Denial:

1. Seventeen captioned photographs of the couple's wedding and life together are credible evidence of good faith marriage.

In her initial application, Ms. Doe submitted numerous photographs of her courthouse wedding ceremony to Mr. Smith.[67] In Declaration 1, Ms. Doe explained that the couple married at the courthouse because they realized they could not yet travel to Country for the traditional Country wedding ceremony and, at the same time, be sure that Ms. Doe would be able to return to U.S. with her husband.[68] In response to the RFE, Ms. Doe submitted detailed captions of these eleven photographs, including that Mr. Smith's sister appears in one wedding photograph, and that it was Ms. Doe's friend and witness, Polly, who took the photographs and thus did not appear in the pictures.[69]

Ms. Doe also submitted four photographs of the day that she and her husband celebrated their marriage with Mr. Smith's family.[70] The photographs show Ms. Doe, Mr. Smith, and Mr. Smith's nephew outside of Mr. Smith's mother's house in City. Ms. Doe further explained that Mr. Smith's friend, Lucas Scott, drove them there, and she pointed out his car in one photograph.[71]

Ms. Doe also submitted two photographs from a third occasion,[72] when she and Mr. Smith visited his mother during the Christmas holidays. These photographs show Ms. Doe with Mr. Smith and his mother, as well as another woman who also lived with Mr. Smith's mother.

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[67] I-360 Petition, Exhibits 8, 9.
[68] Declaration 1 at 5.
[69] *See* RFE Response, Exhibit 3.
[70] *Id.*
[71] *Id.*
[72] The Denial states that the photographs submitted "appear to come from two occasions." Denial at 2. This is incorrect. The photographs were taken on three separate occasions, including the couple's wedding day, a subsequent family celebration of the marriage, and another subsequent holiday visit with Mr. Smith's family.

Ms. Doe detailed in the captions her relationship with Mr. Smith's mother, and that Ms. Doe would visit to help take care of the apartment when his mother was ill.[73]

Ms. Doe also provided a detailed explanation in Declaration 2 of why she no longer has more photographs.[74] She also specifically detailed other photographs from two trips her husband and she took together as being among those in an album Mr. Smith took from her upon their separation.[75]

2. Tax Returns for 2006, 2008, 2009 are credible evidence of good faith marriage.

Ms. Doe submitted tax returns for the years 2006, 2008, and 2009 that indicate that Ms. Doe filed under married status.[76] The Denial states that "these tax documents provide little evidence" related to good faith marriage and joint residence,[77] but it provides no basis for the conclusion that married filing separately is less probative of good faith marriage than married filing jointly. In fact, there are many reasons why a couple may opt to file separately, and such a filing is not determinative of a marriage entered into in bad faith. Further, the Denial ignores Ms. Doe's explanation in Declaration 2 that because Mr. Smith generally controlled the finances and paperwork in their marriage, Ms. Doe did not ask him why these tax returns were not filed jointly with Mr. Smith.[78]

In addition to this primary evidence, Ms. Doe also submitted thirteen pieces of secondary evidence to show good faith marriage. This evidence includes: Ms. Doe's two declarations; nine additional affidavits and declarations from eight other individuals; a collection of

[73] RFE Response, Exhibit 3.
[74] Declaration 2 at 6.
[75] *Id.*
[76] RFE Response, Exhibit 4.
[77] Denial at 10.
[78] Declaration 2 at 6.

photographs of the marital apartment and furniture; and a report from a licensed psychologist. Chief among the secondary evidence are the following examples:

3. Ms. Doe's two sworn affidavits are credible evidence of her good faith marriage.

Ms. Doe's two declarations provide extensive detail of her courtship with Mr. Smith, and of their good faith marriage. First, Ms. Doe described their courtship, which spanned a period of two years. In Declaration 1, Ms. Doe described their unexpected meeting at a store in the summer of 2003, and the several dates that transpired over the next few weeks.[79] She explained that Mr. Smith took her to American buffet restaurants and once to the Anytown waterfront.[80] She described how they introduced each other to their friends, and how Mr. Smith came to know others in the Country community in Anytown.[81] Ms. Doe detailed how the relationship developed and how, after the first several weeks of dating, the couple would stay in together and she would cook him big, traditional Country meals.[82] Mr. Smith would buy the groceries and Ms. Doe would cook and clean for him because, as she explained, "[i]n Country culture, women are expected to serve the men. Michael seemed to expect the same thing, but I didn't mind cooking and cleaning for him then because he was kind to me and he enjoyed the food."[83] Even though she had not planned to do so, Ms. Doe fell in love with Mr. Smith because he "was kind-hearted, willing to help and treated me with respect. I felt lucky that he loved me."[84]

Second, Ms. Doe described Mr. Smith's proposal and their subsequent marriage. Nearly two years into the couple's courtship, Mr. Smith proposed during a date at a restaurant.[85] Ms. Doe said she "gladly accepted his proposal and we decided to spend the rest of our lives

[79] Declaration 1 at 4.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.* at 5.
[85] *Id.*

together."[86] Ms. Doe explained that the couple wanted to travel to Country in order to get her parents' blessing and to have a traditional Country wedding ceremony there. However, Mr. Smith worried that Ms. Doe would not be able to return to the U.S. from Country given her immigration status, and so the couple decided to first marry in a courthouse in the U.S.[87] As detailed above, Ms. Doe submitted photographs of this wedding ceremony, and a description of the friends and family who attended and celebrated with the couple after the ceremony.[88] At that time, she explained, "[w]e were excited to spend the rest of our lives together."[89] A week after the wedding ceremony, the couple celebrated their marriage with Mr. Smith's family, photographs of which were also submitted and described above.

Ms. Doe has provided detailed descriptions of the love she felt for her husband, and the excitement she felt to start a new life with him. She has said:

> After I had been divorced [in Country], I did not think that any man would want me. I felt so lucky that Michael wanted to be with me and I wanted do everything I could to make him happy. I believed I was truly lucky to have met someone that was as understanding and caring as Michael. I did not feel worthy of him. I was happy that he loved me even though I told him I could not have children [as she believed based upon her attempts to conceive in her first marriage].[90]

Ms. Doe explained that she wanted to have children with Mr. Smith, and that the couple sought treatment by a fertility doctor in Anytown. Ms. Doe described how she started taking medication to help her conceive, but that she had to stop the treatment after Mr. Smith lost his job.[91] Ms. Doe also described the time that the couple spent with Mr. Smith's mother and family in City.

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[86] *Id.*
[87] *Id.* at 6.
[88] RFE Response, Exhibit 3; *see also* Declaration 1 at 6.
[89] Declaration 1 at 6.
[90] *Id.* at 7.
[91] *Id.*

She explained how the couple's social lives became further intertwined, and that Mr. Smith began to attend church with Ms. Doe.[92]

Ms. Doe also provided information detailing the couple's commingled finances and accounts. She explained that the couple opened a joint bank account together and began saving "our money."[93] She described how, at first, the couple seemed to be in agreement about how to maintain their finances. She explained in detail how they would pay the rent for the marital residence, and describes how the couple would withdraw cash throughout month, keeping it under a jewelry box, and then at end of month provide the rent to Sam Johnson.[94] Sam Johnson would then take the money, along with his share of the rent, to a 7-Eleven store, where he would buy a money order to pay the total rent to the apartment management.[95] Ms. Doe submitted a photograph of this jewelry box and of the apartment building.[96]

Ms. Doe also described a number of financial matters that were controlled by Mr. Smith and in which she had no say. She explained that Mr. Smith had a car when they married and though he taught Ms. Doe to drive, he got "angry" and refused when she asked him to add her name to the insurance policy.[97] She explained that Mr. Smith also controlled all the paperwork for her immigration status and their finances, including tax returns.[98] As noted above, Ms. Doe has located and provided copies of tax returns filed during the marriage that were filed "married filing separately," and she does not know why they were not jointly filed since she only did what her husband said to do.[99]

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[92] *Id.*
[93] *Id.*
[94] Declaration 2 at 3.
[95] *Id.*
[96] RFE Response, Exhibits 13, 15.
[97] *See* Declaration 2 at 6.
[98] *See id. See also* Declaration 1 at 8–9.
[99] *See* Declaration 2 at 6.

4. Nine witness letters are credible evidence of good faith marriage.[100]

As detailed *supra*, Ms. Doe submitted nine affidavits and/or statements from eight other individuals who attest to the couple's good faith marriage. These witnesses include the couple's roommate, neighbors, friends, and fellow church members who interacted with the couple at various times and throughout the couple's marriage. They speak to the couple's day-to-day activities, as well how happy the couple was at the beginning of the marriage.[101]

5. A credible report from a licensed psychologist corroborates Ms. Doe's accounts of her good faith marriage.

Finally, the report from a licensed psychologist who diagnosed Ms. Doe with Post-Traumatic Stress Disorder and Major Depression also includes a discussion of Ms. Doe's good faith marriage:

> When she met Mr. Smith, she expected her life to be different and for the first years of marriage her life seemed to be developing as she had hoped. She had put all her fears to rest and dared to give herself a chance in a relationship only to relive her past. She was trusting and kept hoping that her marriage would work out at some point, even after it started going badly.[102]

IV. USCIS erred in disregarding credible evidence establishing Ms. Doe's joint residence with and good faith marriage to her abuser, and in failing to weigh the evidence in its totality.

USCIS failed to consider all of the evidence submitted by Ms. Doe that related to her good faith marriage and joint residence. Specifically, neither the RFE nor the Denial make any mention of the copy of the August 2005 affidavit of Sam Johnson that attested to the couple's residence in his apartment. This notarized affidavit was executed and appears to have been submitted prior to Sam Johnson's own 2006 filings to USCIS to which USCIS referred in its RFE and Denial. Further, neither the RFE nor the Denial made any mention of the immigration

[100] In total, there were eight third-party affiants who provided nine affidavits, including two distinct affidavits from Sam Johnson, addressing good faith marriage.
[101] *See, e.g.*, I-360 Petition, Exhibit 11.
[102] I-360 Petition, Exhibit 17 at 8.

paperwork sent to Mr. Smith at the marital residence by USCIS in 2005. Finally, the Denial mentioned but disregarded without explanation the additional primary evidence submitted to support joint residence, to wit, utility bills addressed jointly to Ms. Doe and her abuser, and joint bank account statements addressed to the couple over a period of years.

It total, Ms. Doe has submitted ample evidence from multiple sources supporting her claim that she entered into her marriage in good faith and jointly resided with her abusive husband. The primary evidence spans multiple years of the marriage, and it contains documentation from third party entities such as a bank, a phone company, and USCIS. To the extent that any primary evidence is not available, Ms. Doe has submitted detailed, credible explanations why that evidence was or is in the control of her abusive husband, and why it is not in her ability to provide it. Ms. Doe has also submitted affidavits and statements from eight individual witnesses who attest to her good faith marriage and joint residence. These witnesses include neighbors, friends, and acquaintances who interacted with the couple in different settings and at various times during their marriage.

USCIS erroneously considered each individual piece of evidence that Ms. Doe submitted in isolation of the other evidence. When all of the evidence is considered as a totality, it is clear that Ms. Doe has submitted sufficient evidence to meet her burden to show good faith marriage and joint residence.

Each of the criticisms levied by USCIS against Ms. Doe's evidence are either unsupported or so minor as to be insignificant when measured against the weight of the entirety of the evidence submitted.

First, the Denial claimed that the tax returns Ms. Doe submitted "provide little evidence that [she] resided with [her] spouse or that [she] married [her] spouse in good faith" because they

were filed as married filing separately. However, the Denial made no mention of Ms. Doe's Declaration 2 that plainly explains that her abusive husband controlled the finances, including the filing of taxes, or of the Breaking Barriers article provided by Ms. Doe that discusses economic abuse and controlling of finances as a common tactic of abusers, which further supports Ms. Doe's credible explanation.[103] Further, and as noted above, USCIS does not provide any explanation for why a married couple who file their taxes separately should be deemed a couple who married in bad faith.

Second, the RFE took issue with the photographs Ms. Doe submitted, stating that "a small number of photographs that also include no captions provides little insight into the dynamics of your relationship." In response, Ms. Doe re-submitted the photographs with detailed captions to provide further insight into the dynamics of her relationship with her husband and his family, and she also provided a detailed, credible explanation as to why other photographs that would further provide insight into her good faith marriage were unavailable. The Denial makes no mention of Ms. Doe's credible explanation.

Third, the RFE and Denial also found that, because information in Sam Johnson's own immigration filings indicated that his wife lived with him at the apartment in 2006, this "calls into question who was residing in this apartment at that time." This statement ignores evidence establishing that Ms. Doe's began residing with her abuser in 2005. Further, while Ms. Doe does not have access to the filings relied upon by USCIS, counsel notes that Sam Johnson's quoted statement does not state that he lived only with his wife in 2006, and thus it has no relevance to the question of whether Ms. Doe lived in the apartment at that time.[104] In addition, Ms. Doe

[103] *See* RFE Response, Exhibit 17.
[104] The RFE's statement that "USCIS records show that Sam Johnson has claimed in his own immigration filings in 2006 that he was residing with his wife in apartment 0 and there is no evidence showing that anyone else was living

explained in Declaration 2 that she saw a woman stay at the apartment[105] [a woman who may have been the wife that Sam Johnson referenced in his own immigration filing]. Still, the Denial disregards the explanation offered for the alleged discrepancy.

Fourth, the Denial specifically takes issue with the "vague and general claims" of each affiant in supplemental affidavits, claiming "these affidavits provided no detail regarding their interactions with you."[106] This statement is in plain error, as multiple affidavits provided such details, including the circumstances under which the affiants would encounter the couple during their marriage and joint residence. For example:

> I…used to be a neighbor of Jane Doe and Michael Smith (sic) at the time I was residing in Anytown Apartments. … I *used to see the couple together during evenings after work. The couple used to shop together on Saturdays and would sometimes visit me on Sundays*.[107]
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> ***
>
> …Miss Jane Doe and Brother Michael were happily married and *I know them from year 2006 I usually go to their apartment at Anytown Apartments they were so nice to me that sometimes [I would] go to them with my son*…Jane complained to me about Jonny (sic) behavior…I took it upon myself to talk to Mike (sic) on several occasions but all the advice I gave him prove futile…Since then Jane has [lived] in the apartment till date without no complains…[108]
>
> ***
>
> I knew Jane Doe and Michael Smith (sic) were married since 2006 when I was sharing an apartment with a friend in the building block where the couple resided. *I also used to meet the couple in the neighborhood convenience store (7-Eleven) as well as in church.*[109]
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> ***

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with him" is also clearly in error given the ample evidence provided regarding the joint residence. It is demonstrably false for USCIS to claim that "there is no evidence" showing Ms. Doe's residence in the apartment.

[105] *See* Declaration 2 at 7.

[106] Denial at 2.

[107] RFE Response, Exhibit 7 (emphasis added).

[108] RFE Response, Exhibit 8 (emphasis added).

[109] RFE Response, Exhibit 10 (emphasis added).

> I had known this couple Jane Doe and Mike since 2005 when the couple were residing in their residence at Address, Anytown. *I even invited this couple to my outdooring [Country wedding] ceremony in June 2008 at my home.*[110]

Furthermore, the Denial makes no mention of the affidavit of Evan Adams, submitted with the initial I-360 filing, which provided a significant amount of detail regarding Mr. Adams' firsthand knowledge of the marriage as someone who, he explains, encountered Ms. Doe "almost every Sunday" since 2005 for a period of three years:

> It was through Jane that I first met Michael. *Jane brought Michael to church every now and then. When Jane introduced me to Michael, we stood in front of the church hall after the service to talk for almost 30 minutes. At that time, Jane told me that they were already married, and I could tell that they were really happy together.*
>
> ***
>
> Oftentimes, when Jane and Michael fought, *Michael called me for a ride so that he could go out and get a drink. When I went to Jane and Michael's house*, I tried my best to placate them. I told Michael not to fight with a woman, and took him outside of the house to cool him off.[111]

It appears that USCIS has determined that these affidavits each on their own are insufficient to prove good faith marriage and joint residency. This is an erroneous analysis. When taken together, the affidavits span years of the couple's marriage and include friends, fellow church members, and neighbors, all of whom attest to the couple's good faith marriage and joint residence.

V. USCIS erred in applying the wrong standard of evidence and burden of proof.

As discussed above, USCIS is required to consider "any credible evidence" as proof that a VAWA self-petitioner meets each of the VAWA requirements.[112] Despite references to the any credible evidence standard, the RFE in fact applied a clear and convincing standard, and it

[110] RFE Response, Exhibit 11 (emphasis added).
[111] I-360 Petition, Exhibit 11 (emphasis added).
[112] *See* Section II(A), *supra*.

erroneously required Ms. Doe to provide clear and convincing evidence to rebut the external information USCIS obtained and that USCIS alleged to be inconsistent with Ms. Doe's self-petition and supporting evidence. The RFE states, "It is incumbent upon the self-petitioner to resolve any inconsistencies in the record by independent objective evidence. *Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence* pointing to where the truth lies. See Matter of Ho, 19 I. & N. Dec. 582 (BIA 1988)."[113] This standard is in stark contradiction to the any credible evidence standard that applies to Violence Against Women Act petitions, and it was applied in error. Congress intended VAWA to be an ameliorative statute and "there is a general rule of construction that when the legislature enacts an ameliorative rule designed to forestall harsh results, the rule will be interpreted and applied in an ameliorative fashion with the goal of promoting congressional intent. This is particularly so in the immigration context where doubts are to be resolved in favor of the alien."[114] The BIA has recognized this rule of construction in the context of other ameliorative rules, such as the inclusion of illegitimate children of fathers in the definition of a child under INA § 101(b)(1)(D), emphasizing that the rule "clearly was intended as a generous provision and it should therefore be generously interpreted."[115] USCIS erred in holding Ms. Doe's VAWA self-petition to a higher standard than the statutorily mandated any credible evidence standard.

Further, the RFE is the inappropriate phase for making a credibility determination. Though the RFE stopped short of deeming Ms. Doe not to be credible, it repeatedly referenced that the outside information it obtained "casts doubt" on her claims even though primary and objective evidence already submitted supported her claim of joint residence. The RFE further

[113] RFE at 4 (emphasis added).
[114] *U.S. v. Sanchez-Guzman*, 744 F.Supp. 997, 1002 (E.D. Wash. 1990).
[115] *Matter of Vizcaino,* Interim Decision # 3061 (BIA April 15, 1988).

stated that "significant doubt" was cast on the credibility of Sam Johnson, a determination that appears to have been made without considering all of the evidence supported by Ms. Doe and without acknowledging (as discussed above) that the external information obtained by USCIS is not contradicted by the evidence submitted by Ms. Doe. Even if Sam Johnson's affidavits were deemed not to be credible, Ms. Doe's primary evidence and the affidavits of seven other witnesses support Ms. Doe's joint residence with and good faith marriage to her abusive husband.

Finally, the Denial does not deem any evidence submitted by Ms. Doe to lack credibility, and thus all of the evidence submitted must be considered in determining whether Ms. Doe met her burden to establish good faith marriage and joint residence.

USCIS, in denying Ms. Doe's self-petition, found that the record did not include sufficient evidence to establish that she jointly resided with her husband or entered into her marriage in good faith. This is in clear error and contravenes the statutory and regulatory language of the VAWA. As noted in Section II(A), *supra*, the promulgated regulations for establishing eligibility for VAWA self-petitions makes clear that a self-petitioner like Ms. Doe may submit as few as *one* document of evidence that shows that she has resided with her abusive spouse.[116] Evidence of a good faith 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*.[117]

[116] *See* 8 C.F.R. § 204.2(c)(2)(iii).
[117] 8 C.F.R. § 204.2(c)(2)(vii) (emphasis added).

In total, Ms. Doe has submitted 20 exhibits[118]—both primary and secondary in nature—that show that it is more likely than not that she resided with her abusive husband and entered the marriage in good faith. A self-petitioner has met her burden of a preponderance of the evidence if the evidence submitted demonstrates that is even slightly more likely than not that her claims are true.[119] The multiple pieces of evidence that Ms. Doe submitted clearly show that it is more likely than not that she resided with her abusive husband and that she entered into her marriage in good faith. She has thus met her burden of the preponderance of the evidence. In denying Ms. Doe's self-petition, USCIS does not address how the ample evidence submitted does not meet the preponderance of the evidence burden, and instead implicitly bases its denial on Ms. Doe's failure to submit clear and convincing evidence or evidence that proves beyond a reasonable doubt of her joint residence with her abuser. This is a clear error as it applies the improper burden.

VI. Conclusion

The USCIS denial of Ms. Doe's self-petition violates the law and undermines Congress's determination to protect victims of abuse who, but for the abuser's control of the normal family-immigration process, should have received secure status. Ms. Doe provided ample evidence that she entered into her marriage in good faith and jointly resided with her husband, yet USCIS failed to consider the totality of this evidence, and in fact appears to have ignored pieces of primary evidence. Further, USCIS relied upon external evidence that was in, fact, not contradicted by Ms. Doe's evidence and erroneously held Ms. Doe to an improper standard of evidence and burden of proof. When viewed under the correct evidentiary standard of "any

[118] As detailed *supra*, this evidence includes a collection of 21 photographs and nineteen other distinct pieces of evidence.

[119] *See I.N.S. v. Cardozo-Fonseca,* 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).

credible evidence," and taken together with all of the evidence submitted in this case, it is clear that Ms. Doe entered into her marriage in good faith, and jointly resided with her husband as they began to build a life together before it was shattered by the husband's domestic abuse.

Accordingly, I respectfully request that the AAO reverse the USCIS denial in this case, find that Ms. Doe has met her burden to establish that she entered into her marriage with her abusive husband in good faith and jointly resided with him, and grant Ms. Doe's VAWA self-petition. In the alternative, counsel asks the AAO to remand Ms. Doe's self-petition to the VSC for reconsideration of the full record in accordance with the any credible evidence standard as articulated in case law, the special standards established by Congress, and USCIS guidance.

Dated: December 8, 2014

Respectfully submitted,

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