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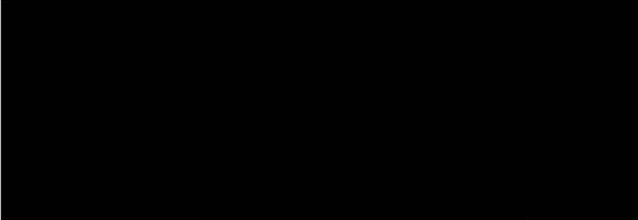
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 05 229 52196

Office: VERMONT SERVICE CENTER

Date: OCT 05 2006

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director (Director), Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the record did not establish that the petitioner had resided with her husband or entered into their marriage in good faith.

On appeal, counsel submits a brief and additional evidence.

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).

Section 204(a)(1)(J) of the Act 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of China who married C-L,¹ a U.S. citizen in China on August 23, 2002.² The petitioner entered the United States on December 19, 2004 as a K-3 nonimmigrant. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on September 5, 2002. A second Form I-130 petition was filed on April 8, 2004. The first I-130 petition was approved on June 9, 2004 but was subsequently revoked. The second Form I-130 petition was withdrawn on July 23, 2004. The petitioner filed this Form I-360 on August 16, 2005. On October 21, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's residence with her husband and her good faith entry into their marriage. The petitioner, through counsel, timely responded. On January 6, 2006, the director denied the petition and counsel timely filed an appeal.

On appeal, counsel states generally that the director's decision was erroneous and that the director abused her discretion. Although additional evidence was submitted on appeal, counsel fails to point to any specific error of fact or law on the part of the director. Upon review of the record, we concur with the director's determinations. Counsel's claims and the evidence submitted on appeal do not overcome the grounds for denial of the petition. Nonetheless, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Joint Residence

On the Form I-360, the petitioner states that she lived with her husband from December 19, 2004 until January 21, 2005 and that their last joint address was [REDACTED]. The petitioner failed

¹ Name withheld to protect individual's identity.

² Although the petitioner's Form I-360 indicates her date of marriage as August 20, 2002, all other evidence in the record reflects the date of her marriage as August 23, 2002.

to submit any documentary evidence such as a lease, insurance documents, or financial documents to support her claim. We note that although counsel states that the petitioner's spouse "refused to add [the petitioner's] name to any rental lease agreement," the petitioner makes no such claim in her statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533; 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner also failed to submit attestations from family, friends, or acquaintances to support her claim.

In response to the director's RFE, the petitioner states that her friends and family did not send any correspondence to her at that address and that the petitioner's family and friends were reluctant to write an affidavit to support her petition "due to the delicate family relationships . . ." The petitioner also indicates that she attempted to obtain a letter from the manager of the apartment complex in which she resided with her spouse but that the manager did not recognize her. The petitioner then describes the inside of the apartment in which she claims to have resided with her spouse, as well as their daily routine.

On appeal, counsel argues that the petitioner's description of the layout of the apartment and her daily schedule is sufficient evidence to establish that the petitioner resided in the apartment. Counsel then argues that because the director did not dispute that the petitioner had been abused, the petitioner's "declaration and her description of the abuse [which took place in the claimed joint residence] must be taken as true." We are not persuaded by counsel's argument. First, we do not find that the petitioner's ability to recall an apartment's layout or her ability to recount daily activities is persuasive evidence of a joint residence. Second, the fact that the director has found the petitioner to have established a claim of abuse does not de facto establish that she resided with her spouse. Each requirement must be independently established; otherwise the clause regarding establishing residence with a spouse would be rendered meaningless if, as counsel argues, once a petitioner has been found establish a claim of abuse, the petitioner need not also establish that she resided with her spouse. Such an argument is not persuasive given the clear language of the statute.³

On appeal, the petitioner also submits an affidavit from [REDACTED] the sister of the petitioner's brother-in-law's wife. Counsel indicates that the affidavit was not previously submitted because the petitioner was not aware of Ms. [REDACTED]'s "willingness to provide this declaration." In her statement, Ms. [REDACTED] claims that she agreed to be the petitioner's sponsor and signed an affidavit of support. Ms. [REDACTED] also states that she saw the petitioner at Ms. [REDACTED] sister's house and that she saw the petitioner and her spouse at the petitioner's spouse's brother's home. Ms. [REDACTED] then generally states that she "know[s]" the petitioner resided with her spouse. Ms. [REDACTED] however, does not indicate that she actually witnessed the petitioner and her spouse at the claimed joint residence or provide details regarding the facts upon which she bases her knowledge.

³ We are expected to give the words used their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). We are to construe the language in question in harmony with the thrust of related provisions and with the statute as a whole. *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). In the present matter, the AAO will not consider the legislative history of the applicable law or the related floor statements. Where the language of a statute is clear on its face, there is no need in inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984).

Consequently, the petitioner failed to establish that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In her unsigned declaration submitted at the time of filing, the petitioner states:

In June of 2002, through a friend's introduction, I met him . . . After dating for about ten days, we decided to get married. On August 20, 2002; we obtained our marriage certificate at Guangzhou. After we got married, he returned to the United States . . . During the process of application, we often talked to each other over the phone. Our relationship was good. On July 23, 2004, he came to Guangzhou to visit me. Since he returned to the U.S. very soon, we were only together for 15 days.

In her unsigned statement submitted in response to the director's RFE, the petitioner states:

When I met [my spouse] in June 2002 he was visiting China at that time. His cousin introduced us. Initially, I just thought I was meeting a new friend. We went out and had a great time. In the first ten days we spent together I learned a lot about him. We saw each other everyday. At the end of the ten days he asked me to marry him.

I felt a sense of security with him because he was a bit older than I. He had promised to take care of me and told me that he wanted to find a good wife and mother for his daughter . . . When he asked me to marry him at the end of the ten days I thought about it deeply. I asked for my father's opinion so I arranged for them to meet. My father thought he was a good guy and did not object. I still contemplated . . . finally, I considered all his qualities and characteristics and concluded that I can trust him and so I agreed. Subconsciously, I was desperate to find a man who will take care of me and mend my scars.

While the short duration of the couple's relationship in the United States may explain the petitioner's lack of joint documentation with her husband, the petitioner has not discussed in any probative detail how she met her husband, their courtship, wedding and any of their shared experiences, apart from his abuse. The petitioner submitted photographs of her and her husband at their wedding ceremony and of the petitioner's spouse and daughter during the time the petitioner remained in China. No other photographs were submitted to document other events throughout their relationship.

The petitioner also submitted correspondence from the petitioner's spouse to the petitioner while she was in China. The correspondence, which consists of a birthday card and a brief letter, is the only documentary evidence of the petitioner's relationship with her spouse during the two-year period after their marriage and prior to her arrival in the United States. These two documents do not independently establish the petitioner's good faith in marrying her husband.

On appeal, counsel submits a signed copy of the petitioner's statement that was submitted in response to the director's RFE. It is noted that the petitioner does not submit a signed version of the declaration that was initially submitted. The petitioner also submits affidavits from the petitioner's father, brother, and a friend of the petitioner. The affidavits from the petitioner's father and brother contain identical language and provide no

specific information regarding the petitioner's courtship with her spouse, their relationship together, or the petitioner's intent at the time of her marriage. The affidavits state only that "[a]fter dating for awhile, both of them had intention to be together." The remaining affidavit, submitted by [REDACTED] indicates that Ms. [REDACTED] attended the petitioner's wedding ceremony and that she had dinner with the couple. While Ms. [REDACTED] indicates she could "see they were a couple who loved each other," she provides no details upon which to base her belief other than that she had dinner with the couple on one occasion. She does not indicate that she spoke with the petitioner about her feelings or provide any other information to demonstrate how she was aware of the petitioner's intent at the time of her marriage.

The present record thus fails to establish that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner failed to demonstrate her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that Citizenship and Immigration Services (CIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.